REQUEST FOR COMPETITIVE SEALED PROPOSALS
JOB ORDER CONTRACTS

Fort Stockton Independent School District seeks competitive sealed proposals for job order contracts for the following work:

General Construction Services – Job Order Contracting
Competitive Sealed Proposal # # 2026-11-03A
For services listed below:

Concrete, General Construction, Equipment and Work

1. Receipt and Opening of Proposals

Proposals are due at 12:00 p.m. CST (Noon) on Friday, November 13, 2026, in the District's Superintendent's office located at 101 W. Division Street, Fort Stockton, TX 79735, at which time and place proposals will be opened and publicly read aloud.

2. Information About Job Order Contracts

As applicable to this solicitation, "job order contracting" is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite.

The law allows the District to award a job order contract for such work if indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks. Under law, contractual unit prices for a job order contract may be established by either:

(1) specifying one or more published construction unit price books and the applicable divisions or line items; or

(2) providing a list of work items and requiring the offerors to propose one or more coefficients or multipliers to be applied to the price book or pre-priced work items as the price proposal.

For this solicitation, the District will accept proposal using two options:

Option #1: Vendor Provided Pre-Priced Items and Rates
Option #2: RS Means Coefficient

For more information, refer to the attached Proposal Form.

The District may award job order contracts under this solicitation to more than one contractor. At the time a specific job order is needed, the District may obtain quotes under awarded job order contracts in order to determine which quote will provide the best value to the District.

The District may engage an architect or engineer to design and/or provide construction administration of any job order.

3. Selection Criteria and Relative Weights

Proposals shall be evaluated based upon the following. Proposers should include information about their business that addresses each of the items below.

CRITERIA		AVAILABLE POINTS
1.	Price;	0 – 30 points
2.	Reputation of proposer and proposer's goods or services;	0 – 30 points
3.	Technical competence;	0 – 20 points
4.	Safety record;	0 – 10 points
5.	The proposer's past relationship with the district;	0 – 10 points
6.	The total long-term cost to the district to acquire the proposer's goods or services;	0 – 5 points
7.	Proposer's experience in the JOC Method;	0 – 25 points
8.	Proposed personnel and methodology;	0 – 20 points

The District will evaluate the information submitted by the offerors on the basis of the selection criteria stated and the results of any interview.

4. MAXIMUM AGGREGATE CONTRACT PRICE: $1,000,000.00

5. PAYMENT AND PERFORMANCE BONDS

The Texas Government Code requires a Performance Bond for any contract that is in excess of $100,000.00 and a Payment Bond for any contract that is in excess of $25,000.00. If required by law, based on the amount or estimated amount of any order under an awarded Job Order contract, the contractor shall obtain and provide to the District payment and performance bonds meeting all legal requirements.

6. PREVAILING WAGE RATE

The prevailing wage rate for this project is the rate attached hereto as **Exhibit A-1.** The proposer who is awarded a contract by a public body or a subcontractor of the proposer shall pay not less than the rates set forth in **Exhibit A-1** to a worker employed by it in the execution of the contract.

7. NON-DISCRIMINATION

The selected proposer must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, marital status, handicap, or national origin.

8. RIGHT TO REJECT SUBMISSIONS AND TO WAIVE PROPOSAL REQUIREMENTS

The District reserves the right to reject any and all proposals, to waive irregularities, formalities, to require financial statements and references, and to accept the proposal that will provide the best value to the District. The District will rank and evaluate the proposal not later than 45 days after the date on which the proposals are opened. Proposals may be held by the District for up to ninety (90) calendar days from the date of the opening of proposals.

9. TAX EXEMPT STATUS TAXES

The District is exempt from state sales tax. Taxes must not be included in the bid. Tax exemption certificates will be executed by the District and furnished upon request.

10. STANDARD TERMS AND CONDITIONS

By submitting a response to this Request for Competitive Sealed Proposals the proposer agrees that upon submission of the proposal to the District that the proposer has considered and accepts the terms of the Contract Documents included in this Request for Competitive Sealed Proposals.

By submitting a proposal, each proposer agrees to waive any claim it has or may have against Fort Stockton ISD and its employees, officers, consultants and their respective employees and officers, arising out of or in connection with the administration evaluation, or recommendation of any proposal; waiver of any requirements under the Solicitation Documents; acceptance or rejection of any bids; and award of the Contract.

11. INSURANCE REQUIREMENTS

The respondent will have to protect , defend, save harmless, and indemnify the owner, its employees, agents and the public from any claims, demands, and/or expenses on account of any injury and/or damage, alleged or real, to persons and/or property arising out of the direct or indirect performance of the services requested in this solicitation.

The respondent will be fully liable to provide and maintain in force during the life of any Contract arising from this solicitation, such insurance as General Comprehensive Liability Insurance, Comprehensive Auto Liability Insurance, Workers' Compensation Insurance, and Errors and Omissions Insurance and Professional Liability insurance. Such policies shall be issued by companies authorized to do business in the State of Texas and shall contain as a minimum, the following provisions, coverage, and policy limits with limits no less than those stated hereinafter or required by law.

12. DOCUMENTS TO BE SUBMITTED

1. Signed Competitive Sealed Proposal Form (Attachment 1)
2. Pricing Information if utilizing Pricing Option #1 (see Attachment 1)
3. Business Information as specified in Section 3 of CSP Form
4. Felony Conviction Notification (Attachment 2)
5. Non-Collusion Statement (Attachment 3)

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COMPETITIVE SEALED PROPOSAL FORM

PROJECT: Fort Stockton ISD – Job Order Contracts

1. The undersigned PROPOSER proposes and agrees, if this Proposal is accepted, to enter into a Job Order Contract with OWNER.

2. PROPOSER accepts all of the terms and conditions of the Instructions to Proposers found in the Project specifications and the Standard Terms and Conditions of this Request for Proposals. This Proposal shall remain in effect for a period of no less than 45 days after the date of Proposal RANKING.

3. In submitting this Proposal, PROPOSER certifies that this Proposal is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; PROPOSER has not directly or indirectly induced or solicited any other PROPOSER to submit a false or sham Proposal; PROPOSER has not solicited or induced any person, firm or a corporation to refrain from proposing; and PROPOSER has not sought by collusion to obtain for himself any advantage over any other PROPOSER or over OWNER.

4. The Proposal response must be returned in an envelope or package marked on the outside with the proposer's name and address. Proposal responses must be returned in sufficient time so as to be received and time stamped by the District on or before the date and time listed on this RFP. It is the sole responsibility of the proposer to ensure timely delivery of the proposal response. The District will not be responsible for failure of service on the part of the US Postal Office, courier companies, or any other form of delivery service chosen by the proposer.

COMPETITIVE SEALED PROPOSAL FORM

PROJECT: GENERAL CONSTRUCTION SERVICES – JOB ORDER CONTRACTS

To submit a Proposal, each Proposer should complete the <u>three</u> sections below.

Section 1: Scope of Services
By marking in the appropriate blank(s) below, indicate the work areas in which you propose to provide services (note that your selections here may limit the nature of work available under any resulting Job Order Contract:

_____Electrical
_____Steam fitting, pipe-fitting, and plumbing
_____Structural steel and sheet metal, welding
_____Masonry and concrete work
_____Asphalt repair
_____General carpentry and drywall installation
_____Carpeting, flooring, drywall finishing
_____Heating ventilation and air condition, electrical and mechanical
_____Doors, windows, louvers, hardware, and glazing
_____Painting of various surfaces
_____Earthwork, excavation, exterior improvement, flex, and rigid paving, landscaping
_____Demolition
_____Asbestos abatement, hazardous material handling
_____Mold
_____Water damage
_____Moving portables
_____Roofing of different types: metal, TPO, PVC membrane, slate, etc.
_____Telecommunications cabling services
_____ALL OF THE ABOVE

Section 2: Pricing
Provide your offered pricing structure. Select from the following options:

<u>Option #1 – Vendor Provided Pre-Priced Items and Rates</u>
Provide a proposal in the form of line-item pricing for common tasks. Vendor may submit its own price book, or may submit by referring to a third-party price book (i.e., an alternative to RS Means), along with a coefficient/multiplier. This may also include hourly rates for labor, as well as any mark-up for overhead and profit.

<u>Option #2 – RS Means Coefficient</u>
Provide a proposal in the form of a coefficient/multiplier to be applied to the localized RS Means line-item prices. RS Means line-item prices are localized based on the City Cost Index indicated in RS Means. For items not contained in RS Means, proposers will propose a multiplier to be added to actual costs. The proposed coefficients/multipliers must capture all costs related to the specified work, including, but not limited to, project management/supervision, overhead, and profit, except that cost for payment and performance bonds, if required, will be added separately. In all cases, pricing will be submitted as "not to exceed" amounts, such that job-order proposals under awarded job-order contracts can be adjusted to submit lower pricing than that proposed herein, but cannot exceed the proposed amount.

Indicate the coefficient/multiplier for RS Means line items and for items not included in RS Means. Example: if RS Means localized (after applying City Cost Index) line item cost is $100 and the coefficient/multiplier is .91, then Owner's cost for that item would be $100 x .91 = $91.00.

COMPETITIVE SEALED PROPOSAL FORM

1. RS Means (all divisions) Regular Hours: Coefficient/multiplier is _____

2. RS Means (all divisions) After Hours: Coefficient/multiplier is_____

3. Items not in RS Means: Coefficient/multiplier is_____

RS Means line items will be localized using the City Cost Index applicable to the city nearest the work.

Section 3: Business Information
Provide the following information by enclosing a separate document:

1. Business Name, Address, and Phone Number
2. Name of Authorized Representative
3. How many years have you been in business?
4. Have you done business under any other name?
5. Provide three business references (school districts preferred).
6. Generally describe your experience in the specified area of construction.
7. Do you perform work using subcontractors?
8. Provide any additional information that speaks to your qualifications and to the Selection Criteria.
9. Individual job orders in excess of $25,000 will require Payment Bonds, while job orders in excess of $100,000 will require both Payment and Performance Bonds. Please state whether you are capable of obtaining such bonds if needed.
10. Do you currently hold a Job Order Contract with any other government entities? If so, please identify the entities.
11. Identify the personnel that will be in charge of managing projects and describe their experience and qualifications. You may attach a resumé for each person instead.
12. Provide information related to your firm's accident frequency rate for the last five years, including any OSHA citations and deaths that have occurred on your projects.

Note: Proposers are encouraged to propose alternative solutions to accomplish project objectives consistent with the requirements contained in the Instruction to Bidders. If alternative solutions are proposed, provide summary of alternate system in separate attachment to this Proposal Form with costs clearly identified.

COMPETITIVE SEALED PROPOSAL FORM

Proposer is providing separate alternate proposal: Yes_____ No_____.

Name and Address of PROPOSER:

_____ _____
Signature

_____

_____ _____
Name and Title

Telephone _____

Sworn to and subscribed before me this _____ day of _____, 20___.

SEAL

_____
Notary Public in and for the State of Texas

SEAL (If Proposal is By a Corporation)_____

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ATTACHMENT 2
FELONY CONVICTION NOTIFICATION

Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony."

Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract."

THIS NOTICE IS NOT REQUIRED OF A PUBLICLY-HELD CORPORATION
PLEASE COMPLETE THE INFORMATION BELOW

I, undersigned agent for the firm named below, certify that the information concerning notification of felony conviction has been reviewed by me and the following information furnished is true to the best of my knowledge.

VENDOR'S NAME: _____

AUTHORIZED COMPANY OFFICIAL'S NAME (PRINTED):

_____

A. My firm is publicly-held corporation, therefore, this reporting requirement is not applicable.

Signature of Company Official:_____

B. My firm is not owned nor operated by anyone who has been convicted of a felony.

Signature of Company Official:_____

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony:

Name of Felon(s): _____

Details of Conviction(s): _____

_____

Signature of Company Official: _____

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ATTACHMENT 3
FORT STOCKTON INDEPENDENT SCHOOL DISTRICT
NON-COLLUSION STATEMENT

STATE OF _____

COUNTY OF _____

_____, of lawful age, being duly sworn, on oath says, that (s)he is the agent authorized by the proposal to submit the attached proposal. Affiant further states that the proposer has not been a party to any collusion among proposal/proposers in restraint of freedom of competition by agreement to proposal at a fixed price or to refrain from proposing; or with any District employee, Board Trustee, or benefit consultant as to quantity, quality, or price in the prospective contract, or any other terms of said proposers and any District employee, Board Trustee, or benefit consultant concerning exchange of money or other things of value for special consideration in the letting of this contract.

_____
Signature

_____
Title of Above Signature

Subscribed and sworn to before me this _____ day of _____, 2026.

_____
Notary Public

State of _____

My Commission Expires: _____

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AIA® Document A121™ – 2018

Standard Form of Master Agreement Between Owner and Contractor where Work is provided under multiple Work Orders

AGREEMENT made as of the day of in the year
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

Fort Stockton Independent School District
101 W. Division
Fort Stockton, Texas 79735

and the Contractor:
(Name, legal status, address, and other information)

NOT FOR EXECUTION – FOR PROCUREMENT PURPOSES ONLY

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document does not contain a description of the Contractor's scope of Work or establish payment terms or the dates of commencement of the Work or Substantial Completion. This document is intended to be used in conjunction with AIA Document A221™–2018, Work Order for use with Master Agreement Between Owner and Contractor.

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ARTICLE 1 MASTER AGREEMENT TERM AND PARTY REPRESENTATIVES

§ 1.1 This Master Agreement shall be effective for two years after the date first written above ("Date of this Master Agreement").

§ 1.2 This Master Agreement shall apply to all Work Orders agreed to by the parties within the term of this Master Agreement until completion of the Work Order. In the event of a conflict between terms and conditions of this Master Agreement and a Work Order, the terms of the Work Order shall take precedence for the Work provided pursuant to the Work Order. A purported Work Order is not effective and is not contractually binding on Owner unless (1) it is duly signed by both Owner and Contractor, and (2) meets all requirements under this Agreement.

§ 1.3 This Master Agreement will renew on an annual basis for up to three additional years, on the day and month of the Date of this Master Agreement, unless either party provides notice of their intent not to renew this Master Agreement. Notice must be provided at least 60 days prior to the renewal date. In the event either party elects not to renew this Master Agreement, the terms of this Master Agreement shall remain applicable until all Work Orders under this Master Agreement are completed or terminated.

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§ 1.4 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to this Master Agreement and each Work Order:

Owner's Board of Trustees, acting as a body corporate.

§ 1.4.1 In each Work Order, the Owner may identify an additional representative authorized to act on the Owner's behalf with respect to the Work Order.

§ 1.5 The Contractor identifies the following representative authorized to act on the Contractor's behalf with respect to this Master Agreement and each Work Order:

§ 1.5.1 In each Work Order, the Contractor may identify an additional representative authorized to act on behalf of the Contractor with respect to the Work Order.

ARTICLE 2 WORK ORDERS

§ 2.1 The Owner is not required to issue any Work Orders under this Master Agreement.

§ 2.3 The Contractor shall execute the Work set forth in each agreed upon Work Order, consisting of AIA Document A221-2018, Work Order, as modified. Each Work Order shall state the name, location, and detailed description of the Project; identify the Architect; state the Contract Time; state the Contract Sum; describe the Work; and enumerate the Contract Documents.

§ 2.4 The Owner shall make the Contract Documents available to the Contractor prior to execution of the Work Order, and thereafter, upon request. The Owner may charge the Contractor for the reasonable cost to reproduce the Contract Documents provided to the Contractor.

§ 2.5 The Contractor agrees that pricing for all Work Orders will honor the pricing information contained in Exhibit B.

ARTICLE 3 PAYMENTS

§ 3.1 Contract Sum and Progress Payments

§ 3.1.1 Each Work Order shall include a Contract Sum. The Owner shall pay the Contractor the Contract Sum in current funds in accordance with each individual Contract. Where the Contract Sum is based on the Cost of the Work under Section 3.3 or 3.4 of the Work Order, the Cost of the Work is defined in Exhibit A, Determination of the Cost of the Work.

§ 3.1.2 Applications for Payment will be submitted individually for each Contract.

§ 3.1.3 Based upon Applications for Payment for individual Contracts submitted to the Architect by the Contractor, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 3.1.4 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as set forth in the Work Order.

§ 3.1.5 Owner shall make payment within forty-five (45) days of the date Contractor's Application for Payment is certified by the Architect, or, if there is no Architect, the date that Contractor's Application for Payment is approved by Owner.

§ 3.1.6 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

Five Percent (5%) or as otherwise required by law.

§ 3.2 Final Payment

§ 3.2.1 Final payment for individual Contracts, constituting the entire unpaid balance of the Contract Sum, shall be

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made by the Owner to the Contractor when

.1 the Contractor has fully performed the Work except for the Contractor's responsibility to correct Work as provided in Section 16.2, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 13.7.1.

§ 3.2.2 The Owner's final payment to the Contractor shall be made no later than 45 days after the issuance of the Architect's final Certificate for Payment.

§ 3.2.3 Owner shall deduct accrued liquidated damages from final payment to Contractor. This section does not prohibit the Owner from deducting accrued liquidated damages at any time before final payment.

§ 3.3 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

Owner and Contractor recognize that time is of the essence in the Agreement and that the Owner will suffer financial loss if the Work is not completed within the time specified in each Work Order, subject to extensions allowed by this Agreement. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed within such time. Accordingly, in the event the Contractor fails to achieve Substantial Completion of the Work by the date indicated in each Work Order, the Owner shall be entitled to liquidated damages in the amount stated in each Work Order until the Work achieves Substantial Completion. In the event the Contractor fails to achieve Final Completion of the Work by the date indicated in each Work Order, the Owner shall be separately entitled to liquidated damages in the amount stated in each Work Order until the Work is finally completed. It is expressly understood that the amount of liquidated damages agreed upon in each Work Order is each a fair estimate of the pecuniary damages that will be sustained by the Owner in the event that the work is not completed within the agreed time. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult, and in no sense shall be considered a penalty. The parties agree that the damages that the Owner would suffer due to the Contractor's failure to meet the necessary timelines are difficult to estimate. Each party represents that, as of the date of each Work Order, it believes the liquidated damages identified in the Work Order are a reasonable estimate of the damages that the Owner would suffer due to the Contractor's failure to meet the necessary timelines, and Contractor acknowledges that such representation on its part is a substantial inducement to Owner's agreement with the terms of this Agreement and each Work Order. The parties agree that the Owner may withhold any accrued liquidated damages at any time and from any payment that otherwise may be due to the Contractor.

ARTICLE 4 DISPUTE RESOLUTION

§ 4.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 19.5, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[X] Litigation in a court of competent jurisdiction

ARTICLE 5 GENERAL PROVISIONS

§ 5.1 The Work

The term "Work" means the construction and services required by the Contract Documents enumerated in a Work Order, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Work Order and related Contract. The Work may constitute the whole or a part of the Project identified in a particular Work Order.

§ 5.2 The Contract Documents

The Contract Documents are enumerated in each Work Order and consist of this Master Agreement; the Work Order executed by the Owner and Contractor; all Drawings, Specifications, and Addenda issued in connection with the Work Order; and Modifications issued after execution of the Work Order. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are

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complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 5.3 The Contract

The Contract Documents for each Work Order form a separate Contract for construction of the Work ("The Contract"). The Contract represents the entire and integrated agreement between the parties hereto for construction of the Work and supersedes prior negotiations, representations or agreements, either written or oral. A Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 5.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models, and other similar materials.

§ 5.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 5.5.1 The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 5.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, solely and exclusively for execution of the Work. All copies made by them under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to a Project outside the scope of a Contract without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 5.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 5.9 Notice

§ 5.9.1 Except as otherwise provided in Section 5.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, or by courier.

§ 5.9.2 Notice of Claims by Contractor shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the Owner by certified or registered mail.

§ 5.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Master Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 6 OWNER

§ 6.1 Information and Services Required of the Owner

§ 6.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under

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the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 6.1.1, the Contract Time shall be extended appropriately.

§ 6.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 7.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 6.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, or if the Owner otherwise determines it to be in Owner's best interests, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 6.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. In such a case the Owner may deduct from payments then or thereafter due to the Contractor the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor must file a Claim pursuant to Article 19 and exhaust all contractual adjudication procedures. If Contractor fails to file a Claim and exhaust all contractual adjudication procedures, it waives any right or claim regarding this issue.

ARTICLE 7 CONTRACTOR

§ 7.1 Review of Contract Documents and Field Conditions by Contractor

§ 7.1.1 Execution of a Work Order by the Contractor is a representation that the Contractor has visited the relevant site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 7.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 6.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 7.1.2.1 By executing the Work Order, the Contractor represents and warrants to the Owner that it has carefully examined the plans, Construction Documents, specifications, and the site of the Work, and that from its own investigations, it has been satisfied as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, and all other materials or matters that may in any way affect the Work or its performance. No allowance on the Contractor's behalf will be made by the Owner for any error or negligence by the Contractor failing to visit the site or failing to thoroughly study and compare all of the Construction Documents. Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied.

§ 7.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 7.2 Supervision and Construction Procedures

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§ 7.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under a Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 7.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work.

§ 7.2.3 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Contractor shall fully comply, and shall require any applicable subcontractor to comply, with:

.1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work;

.2 The special shoring requirements, if any, of the Owner; and

.3 Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system.

.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

§ 7.2.4 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to 1) make Contractor the agent, servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status.

§ 7.3 Labor and Materials

§ 7.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 7.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 7.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification.

§ 7.3.4 It is required that the Contractor and Subcontractors pay not less than the prevailing wage rates adopted by Owner pursuant to Texas Government Code Chapter 2258 for wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them. The wage rates adopted by Owner under Chapter 2258 are the Davis-Bacon schedules adopted by the U.S. Department of Labor for Dallas County, Texas, current as of the date of each Work Order. Any workers not included in the adopted schedule shall be properly classified and paid not less than the rate of prevailing wages in the locality of the Work at the time of construction. Owner shall be paid by Contractor $60.00 per violation, per day or part of a day, that a worker is paid less than the adopted prevailing wages.

§ 7.3.5 The Contractor shall not allow any person who has been convicted of a felony or sex offense to carry out any portion of the Work or to be present on Owner's property.

§ 7.3.6 Pursuant to Texas Education Code Section 44.034, Contractor must give advance written notice to the Owner if the Contractor or an owner or operator of the Contractor has been convicted of a felony. The Owner may terminate this Agreement if the Owner determines that the Contractor failed to give such notice or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly-held corporation.

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§ 7.3.7 Contractor shall take all steps necessary to ensure compliance with Texas Education Code § 22.0834. Contractor shall ensure that all Contractor and Subcontractor employees and representatives who will enter upon a school campus submit to a national criminal history record information review by the Owner. If Contractor believes one or more specific people are not subject to the requirements of Texas Education Code § 22.0834, Contractor may submit a written request to Owner identifying such people, and Owner shall make a determination whether the requirements apply.

If it is determined that Contractor, a Subcontractor, or any Contractor or Subcontractor employees or representatives is in violation of this provision, Contractor shall immediately remove such person from the property of the Owner with no requirement of written notice from the Owner and shall prohibit such person from future entry on the property of the Owner.

In addition to the foregoing, Contractor represents to Owner that it (1) has adopted a policy prohibiting employees and representatives, including subcontracting entity employees and representatives, from interacting with students or entering areas used by students, (2) has and will inform employees/representatives of the policy, and (3) shall enforce the policy at the public work area.

§ 7.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage, except where such damage or defect is Contractor's fault. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 13.6.3.

§ 7.5 Taxes

Owner is an exempt entity under the tax laws of the State of Texas. Texas Tax Code § 151.309; 34 TAC § 3.322. Contractor shall fulfill the requirements of the Texas Tax Code § 151.309, § 151.310, § 151.311 and 34 TAC § 3.291; 3.287. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded. Contractor will accept a Certificate of Exemption from the Owner, pursuant to Texas Tax Code § 151.054(e); § 151.155; and 34 TAC § 3.287. Contractor shall obtain Certificates of Resale from Contractor's suppliers. Texas Tax Code § 151.154, 34 TAC § 3.285. Failure of Contractor or any Sub-Contractor to obtain Certificates of Resale from their suppliers shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Contractor shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

§ 7.6 Permits, Fees, Notices, and Compliance with Laws

§ 7.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of a Contract and legally required at the time bids are received or negotiations concluded.

§ 7.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work when it knows or reasonably should know it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate

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responsibility for such Work and shall bear the costs attributable to correction.

§ 7.7 Allowances

The Contractor shall include in the Contract Sum for each Work Order all allowances stated in the Contract Documents for that Work Order. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

§ 7.8 Contractor's Construction Schedules

§ 7.8.1 The Contractor, promptly after executing a Work Order, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work described in that Work Order. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 7.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect.

§ 7.9 Submittals

§ 7.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 7.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 7.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 7.10 Use of Site

The Contractor shall confine operations at the site(s) to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site(s) with materials or equipment.

§ 7.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 7.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under a Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material from and about the Project.

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§ 7.13 Access to Work
The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 7.14 Royalties, Patents and Copyrights
The Contractor shall pay all royalties and license fees. THE CONTRACTOR WAIVES AND RELEASES CLAIMS AGAINST THE OWNER AND ARCHITECT, AND SHALL DEFEND AND INDEMNIFY OWNER AND ARCHITECT FROM SUITS OR CLAIMS FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS, AND SHALL HOLD HARMLESS THE OWNER AND ARCHITECT FROM LOSS ON ACCOUNT THEREOF, PROVIDED, HOWEVER, CONTRACTOR, SHALL NOT BE RESPONSIBLE TO ARCHITECT FOR SUCH DEFENSE OR LOSS WHEN A PARTICULAR DESIGN, PROCESS OR PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS REQUIRED BY THE CONTRACT DOCUMENTS, OR WHERE THE COPYRIGHT VIOLATIONS ARE CONTAINED IN DRAWINGS, SPECIFICATIONS OR OTHER DOCUMENTS PREPARED BY THE ARCHITECT AND SHALL NOT BE RESPONSIBLE TO OWNER IF OWNER REQUIRES A PARTICULAR DESIGN, PROCESS OR PRODUCT THAT CONSTITUTES A COPYRIGHT VIOLATION. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 7.15 Indemnification
§ 7.15.1 TO THE FULLEST EXTENT PERMITTED BY LAW THE CONTRACTOR WAIVES AND RELEASES CLAIMS AGAINST, AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ARCHITECT, OWNER'S TRUSTEES, ARCHITECT'S CONSULTANTS, OWNER'S CONSULTANTS AND OFFICERS, AND AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF) INCLUDING, BUT NOT LIMITED TO, LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OR OWNER, OWNER'S CONSULTANTS, OR ANY OTHER PARTY OR ENTITY INDEMNIFIED HEREUNDER. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 7.15. ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR AT THE RATE OF INTEREST PROVIDED TO BE PAID ON JUDGMENTS UNDER THE LAWS OF THE STATE OF TEXAS.

§ 7.15.1.1 IN ADDITION TO THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE OWNER, ARCHITECT, OWNER'S TRUSTEES, ARCHITECT'S CONSULTANTS, OWNER'S CONSULTANTS AND OFFICERS, AND AGENTS AND EMPLOYEES OF ANY OF THEM (THE "INDEMNITEES"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED , OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF OWNER AND CONTRACTOR THAT IN SUCH EVENT THE CONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF

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DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR OWNER UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

§ 7.15.2 In claims against any person or entity indemnified under this Section 7.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 7.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 7.15.3 The obligations of the Contractor under this section 7.15 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them, caused by or resulting from: (1) defects in plans, designs, or specifications prepared, approved, or used by the Architect or engineer; or (2) negligence of the Architect or engineer in the rendition or conduct of professional duties called for or arising out of the construction contract and the plans, designs, or specifications that are a part of the construction contract; and (3) arising from: (a) personal injury or death; (b) property damage; or (c) any other expense that arises from personal injury, death, or property damage, or as otherwise limited by Texas Civil Practice & Remedies Code section 130.001 *et seq.*

§ 7.15.4 Contractor agrees to indemnify and to hold the owner's other contractors harmless from all claims for bodily injury and property damage to the same extent as provided in section 7.15.1 above.

§ 7.15.5 The provisions of section 7.15 in its entirety shall survive the completion, termination or expiration of this contract.

§ 7.15.6 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under section 7.15, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect. It is understood and agreed that Subparagraph 7.15.1 above is subject to, and expressly limited by, the terms and conditions of Texas Civ. Prac. & Rem. Code Ann. Sec. 130.001 to 130.005, as amended.

ARTICLE 8 ARCHITECT

§ 8.1 The Owner may retain an Architect to perform the services enumerated in this Article 8 and as described elsewhere in this Master Agreement. Contractor agrees that Owner is not responsible for any fault or failure of the Architect and hereby waives any claims against Owner arising from any fault or failure of the Architect. The Contractor further acknowledges that the Architect is not the agent of the Owner and that the Architect has no authority to bind the Owner.

§ 8.1.1 This Agreement does not require that the Owner hire an Architect, but Owner reserves the right to do so. If the Owner does not hire an Architect, any references to the "Architect" in the Contract Documents shall be considered to refer to Owner, subject to the following acknowledgments:

- The Owner has not performed and does not undertake any duty to perform professional services for the benefit of Contractor.
- This section shall not be interpreted to expand Owner's liability to include liability for architectural or similar services.
- This section shall not be interpreted to reduce any of the rights that Owner has under the Contract Documents.
- In approving or issuing payments to the Contractor, Owner is not waiving any defects or nonconformities in the Work.

§ 8.2 The Architect listed on each Work Order will provide administration of the Contract as described in the Contract Documents, unless Owner elects otherwise.

§ 8.3 The Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Contract Documents by the duties, responsibilities, or activities of the Architect.

§ 8.4 The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the

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Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 8.5 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 8.6 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 8.7 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 8.8 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 8.9 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all Claims under Article 19.

§ 8.10 The Owner's decisions on matters relating to aesthetic effect will be final.

ARTICLE 9 SUBCONTRACTORS

§ 9.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at a Project site.

§ 9.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after execution of a Work Order, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers.

§ 9.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner.

§ 9.3.1 SUBCONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER, ITS ARCHITECTS AND/OR ENGINEERS, CONTRACTOR, ITS SUBSIDIARIES, THEIR OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS FOR WHICH SUBCONTRACTOR IS RESPONSIBLE INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CLAIMS FOR WHICH THE SUBCONTRACTOR OR ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS OF ANY TIER MAY BE CLAIMED TO BE LIABLE AND LEGAL FEES AND DISBURSEMENTS PAID OR INCURRED TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH FOR WORK TO BE PERFORMED UNDER THIS SUBCONTRACT. IT IS EXPRESSLY UNDERSTOOD THAT THE RIGHTS ARTICULATED IN THIS ARTICLE ARE NOT LIMITATIONS ON ANY OTHER RIGHT CONTAINED IN THIS AGREEMENT OR AT COMMON LAW. THIS SECTION SHALL BE INTERPRETED TO APPLY TO THE FULLEST EXTENT ALLOWED BY LAW.

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§ 9.3.2 Contractor understands and agrees that the language included in § 9.3.1 above is in addition to the rights and responsibilities of the Contractor under the Contract Documents, and nothing contained in the above language shall be construed to limit, reduce or abridge the Contractor's liability arising from or in connection with any property damage, bodily injury, or any other cause of action related to this Project for which Contractor may be held liable, and that this language does not limit, reduce, or abridge Contractor's duty to defend and indemnify Owner in accordance with § 7.15 of this Agreement.

ARTICLE 10 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 10.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to a Project with the Owner's own forces, or with Separate Contractors.

§ 10.2 The Contractor shall afford the Owner and the Owner's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 10.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor.

ARTICLE 11 INSURANCE AND BONDS

§ 11.0.1 No Work will be commenced and no equipment or materials can be shipped until all requirements of this Article have been satisfied, satisfactory evidence of insurance has been provided, and all insurance is in full force and effect. Compliance with this Article 11 by Contractor is a condition precedent to any payment from Owner to Contractor. Contractor shall notify Owner and Architect in writing of any proposed nonconformity with these requirements and shall notify Owner and Architect in writing of any insurance changes which occur during the terms required under the Contract Documents. Any deviation from these requirements can only be approved by Owner's Board of Trustees. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Contractor is unable to procure the insurance designated herein because the insurance is not reasonably available or is cost-prohibitive, then Contractor shall provide written notice to Owner's Board of Trustees. Said lack of insurance may then be grounds for termination or modification of this Agreement.

§ 11.0.2 Satisfactory evidence of insurance required by this Article shall be provided to Owner and Architect not later than five business days after execution of the Contract by Owner. Satisfactory evidence shall include copies of all required insurance policies, declarations, and endorsements themselves. In addition, Contractor shall also provide a duly-executed ACORD Form 25 Certificate of Liability Insurance naming Owner as a certificate holder and attaching all endorsements required herein. The Contractor shall furnish Owner all insurance amendments, renewals, notices, cancellations and additional endorsements, as they are provided to Contractor.

§ 11.0.3 Unless a higher rating is specifically required elsewhere in this Agreement, all insurance required herein shall be obtained from a company licensed to do business in the State of Texas by the Texas Department of Insurance, and shall be underwritten by a company rated not less than A-X in A.M. Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on A.M. Best's website, www.ambest.com, and that permits waivers of subrogation.

§ 11.0.4 All insurance required herein shall name the Owner, its officers, employees, representatives or agents, as an additional insured, except Contractor's Workers' Compensation insurance. Contractor's insurance policies shall not contain a provision that would exclude or otherwise bar or limit coverage for claims by the Owner based on the Owner's status as an additional insured.

§ 11.0.5 All insurance required herein shall, by endorsement, be primary insurance with respect to the Owner, its officers, employees, representatives or agents. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.0.6 Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, employees, representatives or agents.

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§ 11.0.7 All workers on the Project must be covered by the required insurance policies of the Contractor or a Subcontractor.

§ 11.0.8 Nothing contained in this Article shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.0.9 In the event that the insurers issuing the policies required under this Article 11 deny coverage to Owner, the Contractor or Subcontractor will, upon demand by Owner, defend and indemnify the Owner at the Contractor's or Subcontractor's sole expense.

§ 11.0.10 The Contractor shall require Subcontractors to furnish evidence of equivalent insurance coverage, in all respects, terms and conditions as set forth herein, prior to the commencement of work by the Subcontractor. In no event shall the failure to provide this proof, prior to the commencement of the work, be deemed a waiver by Owner of Contractor's or the Subcontractor's insurance obligations set forth herein.

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor and the Contractor's Subcontractors shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect them and the Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by Contractor or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- **.1** Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed, including private entities performing work at the site, and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project (see Sections 11.1.2.1 and 11.1.5);
- **.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- **.3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- **.4** Claims for damages insured by usual personal injury liability coverage;
- **.5** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- **.6** Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- **.7** Claims for bodily injury or property damage arising out of completed operations;
- **.8** Claims involving contractual liability insurance applicable to the Contractor's obligations under the Contract Documents, including under Section 3.18; and
- **.9** Claims for damages to the Work itself, through builder's risk insurance.

§ 11.1.1.9 Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including:

- **a.** Premises Operations (including X, C and U coverages as applicable).
- **b.** Independent Contractors' Protective.
- **c.** Products and Completed Operations.
- **d.** Personal Injury Liability with Employment Exclusion deleted.
- **e.** Contractual, including specified provision for Contractor's obligation under 3.18.
- **f.** Owned, non-owned and hired motor vehicles.
- **g.** Broad Form Property Damage including Completed Operations.

§ 11.1.1.10 The Contractor shall provide such General Liability Insurance by a Commercial General Liability Policy on an occurrence policy. The Contractor shall maintain this policy from the date of Commencement until one year after the date of final payment.

Commercial General Liability (Occurrence Basis) must:

- (i) be on ISO form CG 00 01 12 04, or equivalent;
- (ii) not modify the separation of insured language;
- (iii) designate Construction Project(s) General Aggregate Limits (ISO CG 25 03 97), or equivalent;
- (iv) delete the contractual liability exclusion with respect to personal injury; and

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(v) state that the defense of any claim and all claim or suit expenses will be provided as an additional benefit and will not be included within the limit of liability.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified below or required by law, whichever coverage is greater. Coverages, on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The stipulated limits of liability aggregate coverages shall be for this Project. The following limits are required:

.1 Commercial General Liability including Premises Operations, Independent Contractors' Protective, Products and Completed Operations, Broad Form Property Damage, Contractual Insurance, and Personal Injury with coverage not less than the following:
(a) General Aggregate:
$2,000,000.00 and it shall apply, in total, to this Project only.
(b) Products and Complete Operations Aggregate:
$2,000,000.00 to be maintained for 2 years after final payment
(c) Personal and Advertising Injury, with Employment Exclusion Deleted:
$1,000,000.00
(d) Each Occurrence:
$1,000,000.00
(e) Fire Damage (any one fire):
$50,000.00

.1.1 Contractual Liability:

.1 Property Damage shall be included in Commercial General Liability Coverage.

.2 Insurance sufficient to cover Contractor's contractual indemnities.

.2 Business Auto Liability (including owned, non-owned, hired, or any other vehicles) with limits not less than the following:
(a) Bodily injury and property damage with combined single limit of $1,000,000.00 per occurrence
(b) Symbol of liability must be "1"

.3 Umbrella Excess Liability:
(a) $10,000,000 per Occurrence/$10,000,000 Aggregate
(b) Aggregate Per Project Endorsement

.4 All Risk Builders Risk Insurance:
If Contractor is a Construction Manager at Risk, then, as specified in each Guaranteed Maximum Price Amendment, in a total amount equal to the Guaranteed Maximum Price; otherwise, in the total amount of the Contract Sum. See Section 11.3.

.5 Workers' Compensation:
(a) State: Statutory benefits
(b) Employer's Liability: $1,000,00 per accident

.6 Professional Liability: $5,000,000

.7 Contractor's Pollution Liability: $5,000,000

.8 Unmanned Aerial Vehicles: $5,000,000

§ 11.1.3 Certificates of insurance with all required endorsements attached acceptable to the Owner shall be filed with the Architect and Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate, policy, and endorsement evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by

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Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor to the Owner and Architect within five days of Contractor's first notice of the same. The Contractor shall also provide to the Owner prior to commencing the Work full copies of all insurance policies and endorsements required by the Contract Documents. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required herein. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of the cancellation or expiration or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 General Requirements

(a) Policies. All policies must:

- **(i)** Be issued by carriers having a Best's Rating of A or better, and a Best's Financial Size Category of Class VIII, or better, and/or *Standard & Poor Insurance Solvency Review* of A- or better, and admitted to engage in the business of insurance in the State in which the Project is located;
- **(ii)** Be endorsed to be primary with the policies of all Owner being excess, secondary and noncontributing;
- **(iii)** Issued on an "occurrence based" policy;
- **(iv)** With respect to all liability policies except workers' compensation/employer's liability, be endorsed to include the Owner as "additional insured";
- **(v)** Contain a provision for 30 days' prior written notice by insurance carrier to Owner required for cancellation, nonrenewal, or substantial modification; and
- **(vi)** Not exclude coverage for claims for Sexual Abuse, Sexual Misconduct, or similar claims.

(b) Limits, Deductibles and Retentions

- **(i)** Except as expressly provided above, no deductible or self-insured retention in excess of $25,000 without prior written approval of Owner.
- **(ii)** No policy may include an endorsement restricting, limiting, or excluding coverage in any manner without the prior written approval of Owner.

(c) Forms

- **(i)** If the forms of policies, endorsements certificates, or evidence of insurance required by Article 11 of this Agreement are superseded or discontinued, Owner will have the right to require other equivalent forms; and
- **(ii)** Any policy or endorsement form other than a form specified in Article 11 of this Agreement must be approved in advance and in writing by Owner.

(d) Evidence of Insurance. Insurance must be evidenced as follows:

- **(i)** Copies of the required insurance policies, declaration, and endorsements themselves;
- **(ii)** ACORD Form 25 *Certificates of Liability Insurance* for liability coverages;
- **(iii)** ACORD Form 28 *Evidence of Property Insurance* for property coverages;
- **(iv)** Evidence to be delivered to Owner prior to commencing Work on the Project and at least thirty (30) days prior to the expiration of current policies; and
- **(v)** ACORD forms must:
  - **a.** Show the Owner as Certificate holders (with Owner's mailing address);
  - **b.** Show Contractors as the "Named Insured";
  - **c.** Show the insurance companies producing each coverage and the policy number and the policy date of each coverage;
  - **d.** Name the producer of the certificate (with correct address and telephone number) and have the signature of the authorized representative of the producer;
  - **e.** Specify the additional insured status (on a separate ACORD Form 45);
  - **f.** State the amounts of all deductibles and self-insured retentions;
  - **g.** Show the primary status and aggregate limit per project where required;

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h. Be accompanied by copies of all required additional insured endorsements; and
i. The phrases "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon Company, its agents , or representatives" must be deleted from the cancellation provision of the ACORD 25 certificate and the following express provision added: "This is to certify that the policies of insurance described herein have been issued to the Insured for whom this certificate is executed and are in force at this time. In the event of cancellation, non-renewal, or material reduction in coverage affecting the certificate holder, 30 days' prior written notice will be given to the certificate holder by certified mail or registered mail, return receipt requested.

(e) **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.1.5.1 ADDITIONAL INSURED STATUS AND CERTIFICATES OF INSURANCE

The provisions of this section 11.1.5.1 are in addition to any other requirements of the Contractor under this Agreement, and do not reduce or otherwise limit any of Contractor's duties.

Owner, along with their respective officers, agents and employees, shall be named on the Commercial General Liability Insurance as Additional Insured (CG 20 10 04 13) for Ongoing Operations and Product's/Completed Operations (CG 20 37 04 13) on the Contractor's and any Subcontractor's Commercial General Liability policy, to the extent that it is permitted by law. This insurance must be primary and noncontributory with respect to the Additional Insureds. This insurance shall remain in effect as set forth below, in the "Continuation of Coverage" provision. Furthermore, Owner, along with their respective officers, agents and employees, shall be named as an Additional Insured to the Contractor's and any Subcontractor's Commercial Auto Liability Policies, to the extent that it is permitted by the law.

It is expressly understood by the parties to this Contract that it is the intent of the parties that any insurance obtained by Owner is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Contractor, the Subcontractor or any of their respective consultants, officers, agents, subcontractors, employees or any directly or indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

To the fullest extent permitted by applicable state law, a Waiver of Subrogation Clause shall be added to the General Liability, Automobile, Workers' Compensation and Excess Liability policies in favor of Owner, and this clause shall apply to the Owner's officers, agents and employees, with respect to all projects during the policy term.

Prior to commencement of work, Contractor shall submit a Certificate of Insurance to Owner and the aforementioned Additional Insured Endorsements as required by this contract. The Certificate shall be in a form approved for use in the state in which the work is to take place. Copies of insurance policies shall promptly be made available to Owner upon request. Contractor or Subcontractor's Insurance Broker shall endeavor to notify Owner of any change in policy or Notice of Cancellation at least 30 days prior to such change or notice taking effect.

The policies required hereunder shall not contain any exclusion or other provision that would deny coverage for a claim made by Owner due to Owner's status as an additional insured.

CANCELLATION, RENEWAL AND MODIFICATION

The Contractor shall maintain in effect all insurance coverages required under this Agreement at the Contractor's sole expense and with insurance companies acceptable to Owner until final completion and acceptance of the entirety of the Contract Work; or longer if so provided in the Agreement such as with respect to completed operations coverage. Certificates of Insurance showing required coverage to be in force must be delivered to Owner prior to commencement of the Contract Work. In the event the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, this shall be considered a material breach of the contract, entitling Owner, at its sole discretion, to purchase such equivalent coverage as desired for Owner's benefit and charge the expense to the Contractor, or, in the alternative, exercise all remedies otherwise provided in the contract, or as permitted by law or equity.

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CONTINUATION OF COVERAGE
The Contractor shall continue to carry Completed Operations Liability Insurance for at least ten (10) years after either ninety (90) days following Substantial Completion of the Work or final payment to the Contractor, whichever is later. The Contractor shall furnish Owner evidence of such insurance at final payment and in each successive year during which the insurance coverage must remain in effect.

§ 11.3 PROPERTY INSURANCE
§ 11.3.1 BUILDER'S RISK INSURANCE Contractor shall obtain, at its expense, a builder's risk "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the initial Contract Sum (or, if the Project is a Construction Manager at Risk project, Guaranteed Maximum Price), plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, flood, wind storm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Contractor, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Contractor shall be responsible for maintaining said builder's risk insurance until the date of Final Completion. If this policy excludes Employee Theft or Dishonesty coverage, including Third Parties, Contractor shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.2 For any claim made against the builder's risk insurance, the deductible shall not exceed $2,500 for a Contract Sum (or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project) of less than $4 million. For a Contract Sum (or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project) of $4 million or more, the deductible shall not exceed $5,000.

§ 11.3.5 Partial occupancy or use shall not commence until the insurance company providing this insurance has consented in writing, by endorsement or otherwise. Owner and Contractor shall take reasonable steps to obtain such consent and shall take no action without written mutual consent that would cause cancellation, lapse, or reduction of this insurance.

§ 11.4 PERFORMANCE AND PAYMENT BOND
§ 11.4.1 The Contractor shall procure and maintain all bonds required for the Work by law or the Contract Documents. Each bond must be in a total amount equal to 100% of the Contract Sum, or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project, whichever is applicable. Provided, however, no limitation herein shall limit Contractor's liability under the Contract Documents. Except as provided below, such bond shall be furnished to Owner before any work begins and not later than five business days after execution of the Contract by Owner. (If the Guaranteed Maximum Price is not known at the time that a Construction Manager at Risk contract is awarded, then the sum of the payment and performance bonds must each be in an amount equal to the Project budget. The Construction Manager at Risk shall deliver the bonds not later than the tenth day after the date the Construction Manager at Risk executes the Contract, unless the Construction Manager at Risk furnished a bid bond or other financial security acceptable to the District to ensure that the Construction Manager will furnish the required payment and performance bonds when the Guaranteed Maximum Price is established.) All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance, and shall fully comply with Texas Insurance Code Section 3503.001 *et seq.* and Texas Government Code Chapter 2253, or their successors. The surety company shall have a rating of not less than "A-X" according to the latest posted ratings on the A.M. Best website, www.ambest.com. The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, then the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus. Contractor shall immediately notify the Owner and Architect in writing if there is any change in: the rating; insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion.

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§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Contractor shall deliver copies of the required bonds to the Owner and Architect not later than five business days after execution of the Contract by Owner. All bonds will be reviewed by the Architect for compliance with the Contract Documents. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's Representative with Architect's recommendation.

§ 11.4.4 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

§ 11.6 WORKERS' COMPENSATION INSURANCE

A copy of a certificate of insurance or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project is required for the duration of the project.

Duration of the project includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in Texas Labor Code § 406.096) include all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the project.

Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. Services do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code § 401.011(44) for all employees of the Contractor providing services on the project for the duration of the project.

The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

1. A certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

2. No later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

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The Contractor shall post on each project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code § 401.011(44) for all of its employees providing services on the project for the duration of the project;

2. Provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project for the duration of the project;

3. Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

4. Obtain from each other person with whom it contracts, and provide to the Contractor:

    a. A certificate of coverage, prior to the other person beginning work on the project; and

    b. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

5. Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6. Notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

7. Contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy issued for delivery, or renewed on or after January 1, 1996. 28 TAC § 110.110(i).

§ 11.7 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contractor shall provide notice to the Owner and Architect promptly and before conditions are disturbed.

ARTICLE 12 TIME

§ 12.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Work Order, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

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§ 12.2 Unless otherwise provided, Contract Time are the periods of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work and for final completion of the Work.

§ 12.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 12.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 13.6.3.

§ 12.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time may be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 19. Under no circumstances shall the Owner be required to pay the Contractor any compensation for such delays. This Agreement does not permit the recovery of damages by the Contractor for any delay or disruption, including, but not limited to, delays due to bad weather or acts of God. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

ARTICLE 13 PAYMENTS AND COMPLETION

§ 13.1 Schedule of Values

§ 13.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to the Work Order, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 13.3 Applications for Payment

§ 13.3.1 Applications for Payment will be submitted individually for each Contract as set forth in this section 13.3.

§ 13.3.2 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 13.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 13.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. Without limiting any of Owner's rights under this Agreement, Owner's payment of any amount to Contractor does not constitute a waiver of any claims arising out of or related to the Work for which payment is being sought, whether or not any supporting data or materials included with the Application for Payment depicts or discloses any information that serves as the basis for those claims.

§ 13.3.3 With each Application for Payment where the Contract Sum is based upon the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 13.3.4 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 13.3.5 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests. CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE

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CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

§ 13.4 Certificates for Payment

§ 13.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 13.4.3. The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

§ 13.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 13.4.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 13.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 13.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 7.2.2, because of

.1 defective Work not remedied;
.2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor (including, but not limited to, liquidated damages);
.6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 13.4.6 When the Contractor disputes the Architect's decision regarding a Certificate for Payment under Section 13.4.3, in whole or in part, the Contractor must submit a Claim in accordance with Article 19, or else it waives any claim or argument related to this issue.

§ 13.5 Progress Payments

§ 13.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 13.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 13.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the

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Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 13.5.4 The Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 13.6 Substantial Completion

§ 13.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 13.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 13.6.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 13.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Retainage withheld under the Agreement is not payable to the Contractor until final completion and acceptance of the entire Project by Owner.

§ 13.7 Final Completion and Final Payment

§ 13.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 13.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 13.7.2 As a condition precedent to the Owner's issuance of final payment and payment of any remaining retained percentage, Contractor must deliver to the Owner a complete release of all liens arising out of the Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 13.7.3 The making of final payment shall not constitute a waiver of claims by the Owner.

§ 13.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

ARTICLE 14 PROTECTION OF PERSONS AND PROPERTY

§ 14.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of a Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

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.1 employees on the Work and other persons who may be affected thereby;
.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules, and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 14.1.2 and 14.1.3, except for damage or loss attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 7.15.

§ 14.2 Hazardous Materials

§ 14.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately. IF CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS THE OWNER, ITS CONSULTANTS, TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE, AS PROVIDED FOR IN SUBPARAGRAPH 7.15.

ARTICLE 15 CHANGES IN THE WORK

§ 15.1 By appropriate Modification, changes in the Work may be accomplished after execution of a Work Order. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive. The parties stipulate that (1) the term "change order" as used in Texas Local Gov't Code § 271.153(2) exclusively means a fully executed Change Order as defined herein, and (2) the phrase "additional work the contractor is directed to perform by a local governmental entity in connection with the contract" exclusively refers to additional work that is the subject of a Construction Change Directive as defined herein.

§ 15.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

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§ 15.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

ARTICLE 16 CORRECTION OF WORK

§ 16.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 16.2 In addition to the Contractor's obligations under Section 7.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 13.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition.

§ 16.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 6.3.

§ 16.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 16.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 16.

ARTICLE 17 MISCELLANEOUS PROVISIONS

§ 17.1 Assignment of Contract

Neither party to a Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 17.2 Governing Law and Venue

The Work Order shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. Exclusive venue for any action arising out of this Agreement or any Contract is in the county where Owner's central administrative offices are located.

§ 17.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations require.

§ 17.4 Neither the Owner's nor the Contractor's representatives, for this Master Agreement or for individual Work Orders, identified in accordance with sections 1.4 and 1.5, shall be changed without ten days' prior notice to the other party.

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ARTICLE 18 TERMINATION

§ 18.1 Termination of a Contract

A Contract may be terminated in accordance with this Article 18. Termination of a Contract under this Article 18 shall not be deemed a termination of any other Contract created pursuant to this Master Agreement.

§ 18.1.1 Termination by the Contractor

If the Architect fails to certify payment as provided in Section 13.4.1 for a period of 45 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 3.1.5 for a period of 45 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work properly executed.

§ 18.1.2 Termination by the Owner for Cause

§ 18.1.2.1 The Owner may terminate a Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .7 fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents.

§ 18.1.2.2 When any of the reasons described in Section 18.1.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate a Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 18.1.2.3 When the Owner terminates a Contract for one of the reasons stated in Section 18.1.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 18.1.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§18.1.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate a Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work properly executed.

ARTICLE 19 CLAIMS AND DISPUTES

§ 19.1 Any demand or assertion by the Contractor seeking, as a matter of right, payment of money, interpretation of any contractual responsibility, a change in the Contract Time, or other relief with respect to the terms of the Contract, is subject to the Claims process outlined in this Article 19. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the Contractor. This Agreement does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents, to withhold or seek any amount from the Contractor, or for any other reason. Contractor's failure to file a timely and proper Claim as described in this Article 19 constitutes a waiver of Contractor's right to make any claim or argument regarding that subject matter and a failure to follow contractual adjudication procedures necessary to maintain its right to seek any judicial relief against Owner. The requirements of this section 19.1 (and all of its subparts) shall constitute an independent "contractual adjudication

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procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.

§ 19.2 Notice of Claims

§ 19.2.1 Claims where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 16.2, shall be initiated by notice to the Architect and Owner within 90 days after occurrence of the event giving rise to such Claim or within 90 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 19.2.3 All Claims by Contractor must be initiated by written notice titled "Notice of Claim" ("Notice") and sent to the Architect and Owner's designated representative. The Notice shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent that the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice, then the Notice shall be amended at the earliest date that is reasonably possible. It is imperative that Owner receive timely specific Notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly. Any claim or portion of a claim by Contractor that has not been made the specific subject of a Notice within ninety (90) days after the occurrence of the event giving rise to such claim or within ninety (90) days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier, is waived. Pursuant to Texas Civil Practices and Remedies Code Section 16.071, Contractor agrees that this is a reasonable notice requirement.

§ 19.2.4 The Architect will serve as the Initial Decision Maker for all Claims. If there is no Architect, then the Owner shall be the Initial Decision Maker. The Initial Decision Maker will review Claims and within 30 days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the Contractor or a response with supporting data from the Owner, (2) reject the Claim in whole or in part, (3) approve the Claim, or (4) suggest a compromise. The Initial Decision Maker shall reject all Claims that are not timely filed or that fail to meet any requirements of this Agreement. In addition to other requirements under this Agreement, full compliance and exhaustion of the Claims process is a condition precedent to either (1) any demand for mediation by Contractor, or (2) any lawsuit by Contractor.

§ 19.3 Contractual Adjudication Procedure for all Claims and Disputes

.1 The requirements of this section 19.3 shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.

.2 Pre-Litigation Grievance and Mediation. Any claim, dispute or other matter in question that Contractor has against Owner shall be subject to full exhaustion of the grievance procedure found in Owner's GF (LOCAL) policy and non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by Contractor. In the case of any such claim, dispute, or other matter, by the Contractor against the Owner, including, but not limited to, any claim that the Owner has breached a contract, the Contractor may not file a lawsuit or demand mediation until the complaint procedure found in Owner's GF (LOCAL) policy has been fully exhausted regarding the contested matter. A copy of this policy is attached hereto and incorporated herein as Exhibit C. The Contractor's failure to timely file a grievance under policy GF (LOCAL), meet any requirement of this Article 19, or otherwise fully exhaust policy GF (LOCAL) in accordance with the policy's requirements is a failure to adhere to contractual adjudication procedures, a failure to exhaust remedies, a failure to fulfill conditions precedent, constitutes waiver, and is a bar to suit against the Owner.

a. The timelines under Policy GF (LOCAL) are amended for purposes of this Agreement as follows: Contractor's complaint must be reduced to writing and filed within ninety (90) calendar days of the date the Contractor first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint. If the Contractor fails to meet this timeline, the Contractor will have failed to exhaust this remedy, will have failed to adhere to this contractual adjudication procedure, will have failed to fulfill conditions precedent to suit, will have waived the complaint, and will be barred from suing the Owner.

b. Contractor agrees that, in order to fully exhaust its remedies under policy GF (LOCAL) and otherwise comply with this section 19.3, Contractor must identify and articulate in writing the specific factual and legal basis for its claims. Any basis that is not identified and articulated by the Contractor as part of its complaint under GF (LOCAL) is waived by

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the Contractor and may not be asserted in any subsequent proceeding against the Owner.

c. The following are each an independent condition precedent to the institution of civil proceedings by the Contractor against the Owner concerning the contested matter: 1) full exhaustion of claims through Owner's GF (LOCAL) policy as described herein, 2) full exhaustion of the Claims process referenced in this Agreement, 3) a written demand by the Contractor for mediation, and 4) good faith and full participation in the mediation process.

d. Following the full exhaustion of claims through Owner's GF (LOCAL) procedure, and upon receipt by Owner of Contractor's written demand for mediation, Owner may, at its option, either proceed with non-binding mediation of the dispute, or provide written notice to Contractor of Owner's decision to waive its right to compel such mediation. Owner's voluntary participation in any mediation or any other settlement discussions shall not be construed as a waiver of any failure by Contractor to exhaust remedies, follow contractual adjudication procedures, or otherwise comply with the Contract Documents. If the parties participate in mediation, the parties shall share the mediator's fee and any filing fees equally.

§ 19.10 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 19.11 Waiver of Claims for Consequential Damages

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Agreement and each Contract. This waiver includes, but is not limited to, damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, delays, and for loss of profit. Contractor also waives all claims for increased cost to perform the work as a direct result of Owner-caused delays or acceleration.

This waiver is applicable, without limitation, to all such damages due to Owner's termination in accordance with this Agreement. Nothing contained in this section 19.11 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

ARTICLE 20 MISCELLANEOUS

§ 20.1 Contractor agrees to waive any claim it has or may have against the Owner, the Architect, and their respective employees and officers, arising out of or in connection with the administration, evaluation, or recommendation of any bid; waiver of any requirements under the Bid Documents; or the Contract Documents; acceptance or rejection of any bids; and award of the Contract.

§ 20.2 The Contractor shall not execute a contract with any Subcontractor that contains an agreement or provision to arbitrate claims. In the event that a Subcontractor seeks to arbitrate a claim arising out of or relating to the Contract Document or this Project, Contractor shall not seek to join in such or any other arbitration proceeding relating to this Project.

§ 20.3 Any right to recovery of attorney's fees available under Texas Local Government Code Chapter 271 is hereby waived.

§ 20.4 This Section 20.4 only applies if Contractor has more than 10 full time employees and the contract is valued at $100,000 or more. By executing this agreement, Contractor verifies the following:

.1 As required by Texas Government Code § 2271.002, Contractor verifies that it does not boycott Israel and will not boycott Israel during the term of this contract.

.2 As required by Texas Government Code § 2274.002, Contractor verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

.3 As required by Texas Government Code § 2276.002, Contractor verifies that it does not boycott energy companies and will not boycott energy companies during the term of this contract.

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§ 20.5 Contractor agrees to exhaust its administrative remedies under District Policy before seeking judicial relief of any type in connection with any matter related to any dispute under this Agreement.

§ 20.6 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.

§ 20.7 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by Contractor of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by Owner of any of the covenants, conditions or agreements hereof to be performed by Contractor shall be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 20.8 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability as provided by the constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein, and as specifically authorized by law.

§ 20.9 Contracting Information

§ 20.9.1 This section 20.9 applies only if, per Texas Government Code §552.371(a), (1) the Agreement has a stated expenditure of at least $1 million in public funds for the purchase of goods or services by the governmental body; or (2) the Agreement results in the expenditure of at least $1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner.

§ 20.9.2 Pursuant to Texas Government Code §552.372, the Contractor must:

(1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract;

(2) promptly provide to the Owner any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and

(3) on completion of the contract, either:

(a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or

(b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

§ 20.9.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

§ 20.9.4 For purposes of this section 20.9, "contracting information" is defined by Texas Government Code §552.003(1-a) and means the following information maintained by a governmental body or sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor:

(A) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body;

(B) solicitation or bid documents relating to a contract with a governmental body;

(C) communications sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor during the solicitation, evaluation, or negotiation of a contract;

(D) documents, including bid tabulations, showing the criteria by which a governmental body evaluates each vendor, contractor, potential vendor, or potential contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and

(E) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

ARTICLE 20 SCOPE OF THIS MASTER AGREEMENT

§ 20.1 This Master Agreement represents the entire and integrated Master Agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Master

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Agreement may be amended only by written instrument signed by both Owner and Contractor.

§ 20.2 This Master Agreement is comprised of the following documents listed below:

.1 This AIA Document A121™–2018, Standard Form Master Agreement Between Owner and Contractor, as modified;

.4 Other documents:
(List other documents incorporated into this Master Agreement.)

Exhibit A – Determination of the Cost of the Work, if applicable
Exhibit B – Pricing Information
Exhibit C – Owner's GF(LOCAL) Policy

This Master Agreement entered into as of the day and year first written above.

OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
(Printed name and title)	*(Printed name and title)*

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Additions and Deletions Report for
AIA® Document A121™ – 2018

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Changes to original AIA text

PAGE 1

PAGE 2

§ 1.1 This Master Agreement shall be effective for ~~one year~~two years after the date first written above ("Date of this Master Agreement").

§ 1.2 This Master Agreement shall apply to all Work Orders agreed to by the parties within the term of this Master Agreement until completion of the Work Order. In the event of a conflict between terms and conditions of this Master Agreement and a Work Order, the terms of the Work Order shall take precedence for the Work provided pursuant to the Work Order. A purported Work Order is not effective and is not contractually binding on Owner unless (1) it is duly signed by both Owner and Contractor, and (2) meets all requirements under this Agreement.

§ 1.3 This Master Agreement will renew on an annual basis for up to three additional years, on the day and month of the Date of this Master Agreement, unless either party provides notice of their intent not to renew this Master Agreement. Notice must be provided at least 60 days prior to the renewal date. In the event either party elects not to renew this Master Agreement, the terms of this Master Agreement shall remain applicable until all Work Orders under this Master Agreement are completed or terminated.

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§ 1.4 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to this Master Agreement and each Work Order:

§ 1.4.1 In each Work Order, the Owner ~~will~~may identify ~~a~~an additional representative authorized to act on the Owner's behalf with respect to the Work Order.

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§ 1.5 The Contractor identifies the following representative authorized to act on the Contractor's behalf with respect to this Master Agreement and each Work Order:

§ 1.5.1 In each Work Order, the Contractor ~~will~~may identify ~~a~~an additional representative authorized to act on behalf of the Contractor with respect to the Work Order.

~~**§ 2.2 The Contractor may decline to accept any Work Order issued by the Owner.**~~
~~§ 2.~~§ 2.3 The Contractor shall execute the Work set forth in each agreed upon Work Order, consisting of AIA Document A221-2018, Work Order, ~~or such other document as the Owner and Contractor may mutually agree upon~~as modified. Each Work Order shall state the name, location, and detailed description of the Project; identify the Architect; state the Contract Time; state the Contract Sum; describe the Work; and enumerate the Contract Documents.

§ 2.5 The Contractor agrees that pricing for all Work Orders will honor the pricing information contained in Exhibit B.

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§ 3.1.5 Owner shall make payment ~~of the certified amount to the Contractor not later than the day of the month. If an~~within forty-five (45) days of the date Contractor's Application for Payment is ~~received~~certified by the Architect ~~after the date fixed above, payment shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~
~~*(Federal, state or local laws may require payment within a certain period of time.)*~~, or, if there is no Architect, the date that Contractor's Application for Payment is approved by Owner.

~~**§ 3.1.7 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.**~~
~~*(Insert rate of interest agreed upon, if any.)*~~
~~%~~Five Percent (5%) or as otherwise required by law.

§ 3.2.2 The Owner's final payment to the Contractor shall be made no later than ~~30~~45 days after the issuance of the Architect's final Certificate for Payment~~, or as follows:~~.

§ 3.2.3 Owner shall deduct accrued liquidated damages from final payment to Contractor. This section does not prohibit the Owner from deducting accrued liquidated damages at any time before final payment.

§ 3.3 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

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Owner and Contractor recognize that time is of the essence in the Agreement and that the Owner will suffer financial loss if the Work is not completed within the time specified in each Work Order, subject to extensions allowed by this Agreement. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed within such time. Accordingly, in the event the Contractor fails to achieve Substantial Completion of the Work by the date indicated in each Work Order, the Owner shall be entitled to liquidated damages in the amount stated in each Work Order until the Work achieves Substantial Completion. In the event the Contractor fails to achieve Final Completion of the Work by the date indicated in each

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Work Order, the Owner shall be separately entitled to liquidated damages in the amount stated in each Work Order until the Work is finally completed. It is expressly understood that the amount of liquidated damages agreed upon in each Work Order is each a fair estimate of the pecuniary damages that will be sustained by the Owner in the event that the work is not completed within the agreed time. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult, and in no sense shall be considered a penalty. The parties agree that the damages that the Owner would suffer due to the Contractor's failure to meet the necessary timelines are difficult to estimate. Each party represents that, as of the date of each Work Order, it believes the liquidated damages identified in the Work Order are a reasonable estimate of the damages that the Owner would suffer due to the Contractor's failure to meet the necessary timelines, and Contractor acknowledges that such representation on its part is a substantial inducement to Owner's agreement with the terms of this Agreement and each Work Order. The parties agree that the Owner may withhold any accrued liquidated damages at any time and from any payment that otherwise may be due to the Contractor.

~~[ ] Arbitration pursuant to Section 19.6 of this Master Agreement~~

[X] Litigation in a court of competent jurisdiction

~~[ ] Other: *(Specify)*~~

~~If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction~~

The Contract Documents are enumerated in each Work Order and consist of this Master Agreement; the Work Order executed by the Owner and Contractor ~~(including, if applicable, Supplementary and other Conditions applicable to the Work Order)~~; all Drawings, Specifications, and Addenda issued in connection with the Work Order; ~~other documents listed in the Work Order;~~ and Modifications issued after execution of the Work Order. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 5.5.1 The ~~Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The~~ Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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§ 5.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, ~~subject to the protocols established pursuant to Sections 5.6 and 5.7,~~ solely and exclusively for execution of the Work. All copies made by them under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to a Project outside the scope of a Contract without the specific written consent of the Owner, Architect and the Architect's consultants.

~~**§ 5.6 Digital Data Use and Transmission**~~

~~The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.~~

~~**§ 5.7 Building Information Models Use and Reliance**~~

~~Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the~~

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~~building information model, and each of their agents and employees.~~

§ 5.9.1 Except as otherwise provided in Section 5.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, ~~by courier, or by electronic transmission in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:~~

~~*(If other than in accordance with a building information modeling exhibit, insert requirements for delivering Notice in electronic format such as name, title and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*~~

~~§ 5.9.2 Notice of Claims~~or by courier.

§ 5.9.2 Notice of Claims by Contractor shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the ~~party to whom the notice is addressed~~Owner by certified or registered mail~~, or by courier providing proof of delivery~~.

~~§ 6.1.2 The Owner shall furnish all necessary surveys and a legal description of sites referenced in a Work Order.~~

~~§ 6.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.~~

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If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, or if the Owner otherwise determines it to be in Owner's best interests, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 13.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for~~In such a case the Owner may deduct from payments then or thereafter due to the Contractor the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor ~~may~~must file a Claim pursuant to Article 19 and exhaust all contractual adjudication procedures. If Contractor fails to file a Claim and exhaust all contractual adjudication procedures, it waives any right or claim regarding this issue.

§ 7.1.2.1 By executing the Work Order, the Contractor represents and warrants to the Owner that it has carefully examined the plans, Construction Documents, specifications, and the site of the Work, and that from its own investigations, it has been satisfied as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, and all other materials or matters that may in any way affect the Work or its performance. No allowance on the Contractor's behalf will be made by the Owner for any error or negligence by the Contractor failing to visit the site or failing to thoroughly study and compare all of the Construction Documents. Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied.

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§ 7.2.3 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Contractor shall fully comply, and shall require any applicable subcontractor to comply, with:

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.1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work;

.2 The special shoring requirements, if any, of the Owner; and

.3 Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system.

.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

§ 7.2.4 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to 1) make Contractor the agent, servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status.

§ 7.3.4 It is required that the Contractor and Subcontractors pay not less than the prevailing wage rates adopted by Owner pursuant to Texas Government Code Chapter 2258 for wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them. The wage rates adopted by Owner under Chapter 2258 are the Davis-Bacon schedules adopted by the U.S. Department of Labor for Dallas County, Texas, current as of the date of each Work Order. Any workers not included in the adopted schedule shall be properly classified and paid not less than the rate of prevailing wages in the locality of the Work at the time of construction. Owner shall be paid by Contractor $60.00 per violation, per day or part of a day, that a worker is paid less than the adopted prevailing wages.

§ 7.3.5 The Contractor shall not allow any person who has been convicted of a felony or sex offense to carry out any portion of the Work or to be present on Owner's property.

§ 7.3.6 Pursuant to Texas Education Code Section 44.034, Contractor must give advance written notice to the Owner if the Contractor or an owner or operator of the Contractor has been convicted of a felony. The Owner may terminate this Agreement if the Owner determines that the Contractor failed to give such notice or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly-held corporation.

§ 7.3.7 Contractor shall take all steps necessary to ensure compliance with Texas Education Code § 22.0834. Contractor shall ensure that all Contractor and Subcontractor employees and representatives who will enter upon a school campus submit to a national criminal history record information review by the Owner. If Contractor believes one or more specific people are not subject to the requirements of Texas Education Code § 22.0834, Contractor may submit a written request to Owner identifying such people, and Owner shall make a determination whether the requirements apply.

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If it is determined that Contractor, a Subcontractor, or any Contractor or Subcontractor employees or representatives is in violation of this provision, Contractor shall immediately remove such person from the property of the Owner with no requirement of written notice from the Owner and shall prohibit such person from future entry on the property of the Owner.

In addition to the foregoing, Contractor represents to Owner that it (1) has adopted a policy prohibiting employees and representatives, including subcontracting entity employees and representatives, from interacting with students or entering areas used by students, (2) has and will inform employees/representatives of the policy, and (3) shall enforce the policy at the public work area.

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants

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that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage, except where such damage or defect is Contractor's fault. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 13.6.3.

~~The~~Owner is an exempt entity under the tax laws of the State of Texas. Texas Tax Code § 151.309; 34 TAC § 3.322. Contractor shall ~~pay sales, consumer, use and other similar taxes that are legally enacted when bids are received or negotiations concluded for an individual Contract, whether or not yet effective or merely scheduled to go into effect~~fulfill the requirements of the Texas Tax Code § 151.309, § 151.310, § 151.311 and 34 TAC § 3.291; 3.287. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded. Contractor will accept a Certificate of Exemption from the Owner, pursuant to Texas Tax Code § 151.054(e); § 151.155; and 34 TAC § 3.287. Contractor shall obtain Certificates of Resale from Contractor's suppliers. Texas Tax Code § 151.154, 34 TAC § 3.285. Failure of Contractor or any Sub-Contractor to obtain Certificates of Resale from their suppliers shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Contractor shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

§ 7.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work ~~knowing~~when it knows or reasonably should know it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

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§ 7.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. ~~Each Party shall be entitled to rely upon the information provided by the other Party.~~ The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

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The Contractor shall pay all royalties and license fees. ~~The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings,~~

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~~Specifications or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the~~THE CONTRACTOR WAIVES AND RELEASES CLAIMS AGAINST THE OWNER AND ARCHITECT, AND SHALL DEFEND AND INDEMNIFY OWNER AND ARCHITECT FROM SUITS OR CLAIMS FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS, AND SHALL HOLD HARMLESS THE OWNER AND ARCHITECT FROM LOSS ON ACCOUNT THEREOF, PROVIDED, HOWEVER, CONTRACTOR, SHALL NOT BE RESPONSIBLE TO ARCHITECT FOR SUCH DEFENSE OR LOSS WHEN A PARTICULAR DESIGN, PROCESS OR PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS REQUIRED BY THE CONTRACT DOCUMENTS, OR WHERE THE COPYRIGHT VIOLATIONS ARE CONTAINED IN DRAWINGS, SPECIFICATIONS OR OTHER DOCUMENTS PREPARED BY THE ARCHITECT AND SHALL NOT BE RESPONSIBLE TO OWNER IF OWNER REQUIRES A PARTICULAR DESIGN, PROCESS OR PRODUCT THAT CONSTITUTES A COPYRIGHT VIOLATION. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 7.15.1 ~~To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 7.15.1~~**TO THE FULLEST EXTENT PERMITTED BY LAW THE CONTRACTOR WAIVES AND RELEASES CLAIMS AGAINST, AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ARCHITECT, OWNER'S TRUSTEES, ARCHITECT'S CONSULTANTS, OWNER'S CONSULTANTS AND OFFICERS, AND AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF) INCLUDING, BUT NOT LIMITED TO, LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OR OWNER, OWNER'S CONSULTANTS, OR ANY OTHER PARTY OR ENTITY INDEMNIFIED HEREUNDER. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 7.15. ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR AT THE RATE OF INTEREST PROVIDED TO BE PAID ON JUDGMENTS UNDER THE LAWS OF THE STATE OF TEXAS.**

§ 7.15.1.1 IN ADDITION TO THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE OWNER, ARCHITECT, OWNER'S TRUSTEES, ARCHITECT'S CONSULTANTS, OWNER'S CONSULTANTS AND OFFICERS, AND AGENTS AND EMPLOYEES OF ANY OF THEM (THE "INDEMNITEES"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED , OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF OWNER AND CONTRACTOR THAT IN SUCH EVENT THE CONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS

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AND DEFEND THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR OWNER UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

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§ 7.15.3 The obligations of the Contractor under this section 7.15 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them, caused by or resulting from: (1) defects in plans, designs, or specifications prepared, approved, or used by the Architect or engineer; or (2) negligence of the Architect or engineer in the rendition or conduct of professional duties called for or arising out of the construction contract and the plans, designs, or specifications that are a part of the construction contract; and (3) arising from: (a) personal injury or death; (b) property damage; or (c) any other expense that arises from personal injury, death, or property damage, or as otherwise limited by Texas Civil Practice & Remedies Code section 130.001 *et seq.*

§ 7.15.4 Contractor agrees to indemnify and to hold the owner's other contractors harmless from all claims for bodily injury and property damage to the same extent as provided in section 7.15.1 above.

§ 7.15.5 The provisions of section 7.15 in its entirety shall survive the completion, termination or expiration of this contract.

§ 7.15.6 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under section 7.15, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect. It is understood and agreed that Subparagraph 7.15.1 above is subject to, and expressly limited by, the terms and conditions of Texas Civ. Prac. & Rem. Code Ann. Sec. 130.001 to 130.005, as amended.

§ 8.1 The Owner ~~shall~~may retain an Architect to perform the services enumerated in this Article 8 and as described elsewhere in this Master Agreement. ~~If an Architect is not required by law, or otherwise not engaged on the Project, the Owner shall perform such services~~Contractor agrees that Owner is not responsible for any fault or failure of the Architect and hereby waives any claims against Owner arising from any fault or failure of the Architect. The Contractor further acknowledges that the Architect is not the agent of the Owner and that the Architect has no authority to bind the Owner.

§ 8.2 The1.1 This Agreement does not require that the Owner hire an Architect ~~listed on each Work Order will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment for the Contract. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract~~, but Owner reserves the right to do so. If the Owner does not hire an Architect, any references to the "Architect" in the Contract Documents shall be considered to refer to Owner, subject to the following acknowledgments:

- The Owner has not performed and does not undertake any duty to perform professional services for the benefit of Contractor.
- This section shall not be interpreted to expand Owner's liability to include liability for architectural or similar services.
- This section shall not be interpreted to reduce any of the rights that Owner has under the Contract Documents.
- In approving or issuing payments to the Contractor, Owner is not waiving any defects or nonconformities in

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the Work.

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§ 8.3 ~~Duties, responsibilities, and limitations of authority of the Architect as set forth~~2 The Architect listed on each Work Order will provide administration of the Contract as described in the Contract Documents, unless Owner elects otherwise.

§ 8.3 The Contractor shall not be ~~restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld~~relieved of Contractor's obligation to perform the Work in strict accordance with the Contract Documents by the duties, responsibilities, or activities of the Architect.

§ 8.9 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all ~~claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith~~Claims under Article 19.

§ 8.10 The ~~Architect's~~Owner's decisions on matters relating to aesthetic effect will be final ~~if consistent with the intent expressed in the Contract Documents~~.

§ 9.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after execution of a Work Order, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.~~

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§ 9.3.1 SUBCONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER, ITS ARCHITECTS AND/OR ENGINEERS, CONTRACTOR, ITS SUBSIDIARIES, THEIR OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS FOR WHICH SUBCONTRACTOR IS RESPONSIBLE INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CLAIMS FOR WHICH THE SUBCONTRACTOR OR ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS OF ANY TIER MAY BE CLAIMED TO BE LIABLE AND LEGAL FEES AND DISBURSEMENTS PAID OR INCURRED TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH FOR WORK TO BE PERFORMED UNDER THIS SUBCONTRACT. IT IS EXPRESSLY UNDERSTOOD THAT THE RIGHTS ARTICULATED IN THIS ARTICLE ARE NOT LIMITATIONS ON ANY OTHER RIGHT CONTAINED IN THIS AGREEMENT OR AT COMMON LAW. THIS SECTION SHALL BE INTERPRETED TO APPLY TO THE FULLEST EXTENT ALLOWED BY LAW.

§ 9.3.2 Contractor understands and agrees that the language included in § 9.3.1 above is in addition to the rights and responsibilities of the Contractor under the Contract Documents, and nothing contained in the above language shall be construed to limit, reduce or abridge the Contractor's liability arising from or in connection with any property damage, bodily injury, or any other cause of action related to this Project for which Contractor may be held liable, and that this language does not limit, reduce, or abridge Contractor's duty to defend and indemnify Owner in accordance with § 7.15 of this Agreement.

§ 10.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to a Project with the Owner's own forces, ~~and~~or with Separate Contractors ~~retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation~~.

§ 10.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate

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contractor because of delays, improperly timed activities or defective construction of the Contractor. ~~The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a separate contractor~~

ARTICLE 11 INSURANCE AND BONDS

§ 11.0.1 No Work will be commenced and no equipment or materials can be shipped until all requirements of this Article have been satisfied, satisfactory evidence of insurance has been provided, and all insurance is in full force and effect. Compliance with this Article 11 by Contractor is a condition precedent to any payment from Owner to Contractor. Contractor shall notify Owner and Architect in writing of any proposed nonconformity with these requirements and shall notify Owner and Architect in writing of any insurance changes which occur during the terms required under the Contract Documents. Any deviation from these requirements can only be approved by Owner's Board of Trustees. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Contractor is unable to procure the insurance designated herein because the insurance is not reasonably available or is cost-prohibitive, then Contractor shall provide written notice to Owner's Board of Trustees. Said lack of insurance may then be grounds for termination or modification of this Agreement.

§ 11.0.2 Satisfactory evidence of insurance required by this Article shall be provided to Owner and Architect not later than five business days after execution of the Contract by Owner. Satisfactory evidence shall include copies of all required insurance policies, declarations, and endorsements themselves. In addition, Contractor shall also provide a duly-executed ACORD Form 25 Certificate of Liability Insurance naming Owner as a certificate holder and attaching all endorsements required herein. The Contractor shall furnish Owner all insurance amendments, renewals, notices, cancellations and additional endorsements, as they are provided to Contractor.

§ 11.0.3 Unless a higher rating is specifically required elsewhere in this Agreement, all insurance required herein shall be obtained from a company licensed to do business in the State of Texas by the Texas Department of Insurance, and shall be underwritten by a company rated not less than A-X in A.M. Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on A.M. Best's website, www.ambest.com, and that permits waivers of subrogation.

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§ 11.0.4 All insurance required herein shall name the Owner, its officers, employees, representatives or agents, as an additional insured, except Contractor's Workers' Compensation insurance. Contractor's insurance policies shall not contain a provision that would exclude or otherwise bar or limit coverage for claims by the Owner based on the Owner's status as an additional insured.

§ 11.0.5 All insurance required herein shall, by endorsement, be primary insurance with respect to the Owner, its officers, employees, representatives or agents. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged.

~~ARTICLE 11 CHANGES IN THE WORK~~**§ 11.0.6** Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, employees, representatives or agents.

§ 11.0.7 All workers on the Project must be covered by the required insurance policies of the Contractor or a Subcontractor.

§ 11.0.8 Nothing contained in this Article shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.0.9 In the event that the insurers issuing the policies required under this Article 11 deny coverage to Owner, the Contractor or Subcontractor will, upon demand by Owner, defend and indemnify the Owner at the Contractor's or Subcontractor's sole expense.

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§ 11.0.10 The Contractor shall require Subcontractors to furnish evidence of equivalent insurance coverage, in all respects, terms and conditions as set forth herein, prior to the commencement of work by the Subcontractor. In no event shall the failure to provide this proof, prior to the commencement of the work, be deemed a waiver by Owner of Contractor's or the Subcontractor's insurance obligations set forth herein.

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

~~§ 11.1.1 By appropriate Modification, changes in the Work may be accomplished after execution of a Work Order. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive~~The Contractor and the Contractor's Subcontractors shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect them and the Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by Contractor or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed, including private entities performing work at the site, and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project (see Sections 11.1.2.1 and 11.1.5);

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 Claims for bodily injury or property damage arising out of completed operations;

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under the Contract Documents, including under Section 3.18; and

.9 Claims for damages to the Work itself, through builder's risk insurance.

§ 11.1.1.9 Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including:

a. Premises Operations (including X, C and U coverages as applicable).

b. Independent Contractors' Protective.

c. Products and Completed Operations.

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d. Personal Injury Liability with Employment Exclusion deleted.

e. Contractual, including specified provision for Contractor's obligation under 3.18.

f. Owned, non-owned and hired motor vehicles.

g. Broad Form Property Damage including Completed Operations.

§ 11.1.1.10 The Contractor shall provide such General Liability Insurance by a Commercial General Liability Policy on an occurrence policy. The Contractor shall maintain this policy from the date of Commencement until one year after the date of final payment.

Commercial General Liability (Occurrence Basis) must:

(i) be on ISO form CG 00 01 12 04, or equivalent;

(ii) not modify the separation of insured language;

(iii) designate Construction Project(s) General Aggregate Limits (ISO CG 25 03 97), or equivalent;

(iv) delete the contractual liability exclusion with respect to personal injury; and

(v) state that the defense of any claim and all claim or suit expenses will be provided as an additional benefit and will not be included within the limit of liability.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified below or required by law, whichever coverage is greater. Coverages, on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The stipulated limits of liability aggregate coverages shall be for this Project. The following limits are required:

.1 Commercial General Liability including Premises Operations, Independent Contractors' Protective, Products and Completed Operations, Broad Form Property Damage, Contractual Insurance, and Personal Injury with coverage not less than the following:

(a) General Aggregate:

$2,000,000.00 and it shall apply, in total, to this Project only.

(b) Products and Complete Operations Aggregate:

$2,000,000.00 to be maintained for 2 years after final payment

(c) Personal and Advertising Injury, with Employment Exclusion Deleted:

$1,000,000.00

(d) Each Occurrence:

$1,000,000.00

(e) Fire Damage (any one fire):

$50,000.00

.1.1 Contractual Liability:

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.1 Property Damage shall be included in Commercial General Liability Coverage.

.2 Insurance sufficient to cover Contractor's contractual indemnities.

.2 Business Auto Liability (including owned, non-owned, hired, or any other vehicles) with limits not less than the following:

(a) Bodily injury and property damage with combined single limit of $1,000,000.00 per occurrence

(b) Symbol of liability must be "1"

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.3 Umbrella Excess Liability:

(a) $10,000,000 per Occurrence/$10,000,000 Aggregate

(b) Aggregate Per Project Endorsement

.4 All Risk Builders Risk Insurance:

If Contractor is a Construction Manager at Risk, then, as specified in each Guaranteed Maximum Price Amendment, in a total amount equal to the Guaranteed Maximum Price; otherwise, in the total amount of the Contract Sum. See Section 11.3.

.5 Workers' Compensation:

(a) State:	Statutory benefits
(b) Employer's Liability:	$1,000,00 per accident
.6 Professional Liability:	$5,000,000
.7 Contractor's Pollution Liability:	$5,000,000
.8 Unmanned Aerial Vehicles:	$5,000,000

§ 11.1.3 Certificates of insurance with all required endorsements attached acceptable to the Owner shall be filed with the Architect and Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate, policy, and endorsement evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor to the Owner and Architect within five days of Contractor's first notice of the same. The Contractor shall also provide to the Owner prior to commencing the Work full copies of all insurance policies and endorsements required by the Contract Documents. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required herein. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of the cancellation or expiration or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 General Requirements

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(a) **Policies.** All policies must:

(i) Be issued by carriers having a Best's Rating of A or better, and a Best's Financial Size Category of Class VIII, or better, and/or *Standard & Poor Insurance Solvency Review* of A- or better, and admitted to engage in the business of insurance in the State in which the Project is located;

(ii) Be endorsed to be primary with the policies of all Owner being excess, secondary and noncontributing;

(iii) Issued on an "occurrence based" policy;

(iv) With respect to all liability policies except workers' compensation/employer's liability, be endorsed to include the Owner as "additional insured";

(v) Contain a provision for 30 days' prior written notice by insurance carrier to Owner required for cancellation, nonrenewal, or substantial modification; and

(vi) Not exclude coverage for claims for Sexual Abuse, Sexual Misconduct, or similar claims.

(b) **Limits, Deductibles and Retentions**

(i) Except as expressly provided above, no deductible or self-insured retention in excess of $25,000 without prior written approval of Owner.

(ii) No policy may include an endorsement restricting, limiting, or excluding coverage in any manner without the prior written approval of Owner.

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(c) **Forms**

(i) If the forms of policies, endorsements certificates, or evidence of insurance required by Article 11 of this Agreement are superseded or discontinued, Owner will have the right to require other equivalent forms; and

(ii) Any policy or endorsement form other than a form specified in Article 11 of this Agreement must be approved in advance and in writing by Owner.

(d) **Evidence of Insurance.** Insurance must be evidenced as follows:

(i) Copies of the required insurance policies, declaration, and endorsements themselves;

(ii) ACORD Form 25 *Certificates of Liability Insurance* for liability coverages;

(iii) ACORD Form 28 *Evidence of Property Insurance* for property coverages;

(iv) Evidence to be delivered to Owner prior to commencing Work on the Project and at least thirty (30) days prior to the expiration of current policies; and

(v) ACORD forms must:

a. Show the Owner as Certificate holders (with Owner's mailing address);

b. Show Contractors as the "Named Insured";

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c. Show the insurance companies producing each coverage and the policy number and the policy date of each coverage;

d. Name the producer of the certificate (with correct address and telephone number) and have the signature of the authorized representative of the producer;

e. Specify the additional insured status (on a separate ACORD Form 45);

f. State the amounts of all deductibles and self-insured retentions;

g. Show the primary status and aggregate limit per project where required;

h. Be accompanied by copies of all required additional insured endorsements; and

i. The phrases "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon Company, its agents , or representatives" must be deleted from the cancellation provision of the ACORD 25 certificate and the following express provision added: "This is to certify that the policies of insurance described herein have been issued to the Insured for whom this certificate is executed and are in force at this time. In the event of cancellation, non-renewal, or material reduction in coverage affecting the certificate holder, 30 days' prior written notice will be given to the certificate holder by certified mail or registered mail, return receipt requested.

(e) **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

~~§ 11.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order~~1.5.1

ADDITIONAL INSURED STATUS AND CERTIFICATES OF INSURANCE

The provisions of this section 11.1.5.1 are in addition to any other requirements of the Contractor under this Agreement, and do not reduce or otherwise limit any of Contractor's duties.

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Owner, along with their respective officers, agents and employees, shall be named on the Commercial General Liability Insurance as Additional Insured (CG 20 10 04 13) for Ongoing Operations and Product's/Completed Operations (CG 20 37 04 13) on the Contractor's and any Subcontractor's Commercial General Liability policy, to the extent that it is permitted by law. This insurance must be primary and noncontributory with respect to the Additional Insureds. This insurance shall remain in effect as set forth below, in the "Continuation of Coverage" provision. Furthermore, Owner, along with their respective officers, agents and employees, shall be named as an Additional Insured to the Contractor's and any Subcontractor's Commercial Auto Liability Policies, to the extent that it is permitted by the law.

It is expressly understood by the parties to this Contract that it is the intent of the parties that any insurance obtained by Owner is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Contractor, the Subcontractor or any of their respective consultants, officers, agents, subcontractors, employees or any directly or

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indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

To the fullest extent permitted by applicable state law, a Waiver of Subrogation Clause shall be added to the General Liability, Automobile, Workers' Compensation and Excess Liability policies in favor of Owner, and this clause shall apply to the Owner's officers, agents and employees, with respect to all projects during the policy term.

Prior to commencement of work, Contractor shall submit a Certificate of Insurance to Owner and the aforementioned Additional Insured Endorsements as required by this contract. The Certificate shall be in a form approved for use in the state in which the work is to take place. Copies of insurance policies shall promptly be made available to Owner upon request. Contractor or Subcontractor's Insurance Broker shall endeavor to notify Owner of any change in policy or Notice of Cancellation at least 30 days prior to such change or notice taking effect.

The policies required hereunder shall not contain any exclusion or other provision that would deny coverage for a claim made by Owner due to Owner's status as an additional insured.

CANCELLATION, RENEWAL AND MODIFICATION

The Contractor shall maintain in effect all insurance coverages required under this Agreement at the Contractor's sole expense and with insurance companies acceptable to Owner until final completion and acceptance of the entirety of the Contract Work; or longer if so provided in the Agreement such as with respect to completed operations coverage. Certificates of Insurance showing required coverage to be in force must be delivered to Owner prior to commencement of the Contract Work. In the event the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, this shall be considered a material breach of the contract, entitling Owner, at its sole discretion, to purchase such equivalent coverage as desired for Owner's benefit and charge the expense to the Contractor, or, in the alternative, exercise all remedies otherwise provided in the contract, or as permitted by law or equity.

CONTINUATION OF COVERAGE

The Contractor shall continue to carry Completed Operations Liability Insurance for at least ten (10) years after either ninety (90) days following Substantial Completion of the Work or final payment to the Contractor, whichever is later. The Contractor shall furnish Owner evidence of such insurance at final payment and in each successive year during which the insurance coverage must remain in effect.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 BUILDER'S RISK INSURANCE Contractor shall obtain, at its expense, a builder's risk "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the initial Contract Sum (or, if the Project is a Construction Manager at Risk project, Guaranteed Maximum Price), plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, flood, wind storm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Contractor, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Contractor shall be responsible for maintaining said builder's risk insurance until the date of Final Completion. If this policy excludes Employee Theft or Dishonesty coverage, including Third Parties, Contractor shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.2 For any claim made against the builder's risk insurance, the deductible shall not exceed $2,500 for a Contract Sum (or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project) of less than $4 million. For a Contract Sum (or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project) of $4 million or more, the deductible shall not exceed $5,000.

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§ 11.3.5 Partial occupancy or use shall not commence until the insurance company providing this insurance has consented in writing, by endorsement or otherwise. Owner and Contractor shall take reasonable steps to obtain such consent and shall take no action without written mutual consent that would cause cancellation, lapse, or reduction of this insurance.

§ 11.4 PERFORMANCE AND PAYMENT BOND

§ 11.4.1 The Contractor shall procure and maintain all bonds required for the Work by law or the Contract Documents. Each bond must be in a total amount equal to 100% of the Contract Sum, or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project, whichever is applicable. Provided, however, no limitation herein shall limit Contractor's liability under the Contract Documents. Except as provided below, such bond shall be furnished to Owner before any work begins and not later than five business days after execution of the Contract by Owner. (If the Guaranteed Maximum Price is not known at the time that a Construction Manager at Risk contract is awarded, then the sum of the payment and performance bonds must each be in an amount equal to the Project budget. The Construction Manager at Risk shall deliver the bonds not later than the tenth day after the date the Construction Manager at Risk executes the Contract, unless the Construction Manager at Risk furnished a bid bond or other financial security acceptable to the District to ensure that the Construction Manager will furnish the required payment and performance bonds when the Guaranteed Maximum Price is established.) All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance, and shall fully comply with Texas Insurance Code Section 3503.001 *et seq.* and Texas Government Code Chapter 2253, or their successors. The surety company shall have a rating of not less than "A-X" according to the latest posted ratings on the A.M. Best website, www.ambest.com. The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, then the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus. Contractor shall immediately notify the Owner and Architect in writing if there is any change in: the rating; insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion.

~~§ 11.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work~~4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Contractor shall deliver copies of the required bonds to the Owner and Architect not later than five business days after execution of the Contract by Owner. All bonds will be reviewed by the Architect for compliance with the Contract Documents. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's Representative with Architect's recommendation.

§ 11.4.4 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

§ 11.6 WORKERS' COMPENSATION INSURANCE

A copy of a certificate of insurance or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project is required for the duration of the project.

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Duration of the project includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in Texas Labor Code § 406.096) include all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the project.

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Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. Services do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code § 401.011(44) for all employees of the Contractor providing services on the project for the duration of the project.

The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

1. A certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

2. No later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

The Contractor shall post on each project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

~~**§ 11.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides**~~The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code § 401.011(44) for all of its employees providing services on the project for the duration of the project;

2. Provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project for the duration of the

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project;

3. Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

4. Obtain from each other person with whom it contracts, and provide to the Contractor:

   a. A certificate of coverage, prior to the other person beginning work on the project; and

   b. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

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5. Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6. Notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

7. Contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy issued for delivery, or renewed on or after January 1, 1996. 28 TAC § 110.110(j).

§ 11.7 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contractor shall provide notice to the Owner and Architect promptly and before conditions are disturbed.

§ 12.2 Unless otherwise provided, Contract Time ~~is~~are the ~~period~~periods of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work and for final completion of the Work.

§ 12.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time ~~shall~~may be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 19. Under no circumstances shall the Owner be required to pay the Contractor any compensation for such delays. This Agreement does not permit the recovery of damages by the Contractor for any delay or disruption, including, but not limited to, delays due to bad weather or acts of God. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

~~**§ 13.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 13.1 shall not constitute**~~

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~~a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.~~
~~**§ 13.2 Control Estimate**~~

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~~**§ 13.2.1** Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to the Work Order, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing the Work Order. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.~~

~~**§ 13.2.2** The Control Estimate shall include:~~

- ~~.1 the Contract Documents enumerated in the Work order, including all Modifications thereto;~~
- ~~.2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;~~
- ~~.3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;~~
- ~~.4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment, the Owner's occupancy requirements, and the date of Substantial Completion; and~~
- ~~.5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.~~

~~**§ 13.2.3** When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.~~

~~**§ 13.2.4** The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.~~

~~**§ 13.2.5** The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.~~

§ 13.3.2 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 13.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 13.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. Without limiting any of Owner's rights under this Agreement, Owner's payment of any amount to Contractor does not constitute a waiver of any claims arising out of or related to the Work for which payment is being sought, whether or not any supporting data or materials included with the Application for Payment depicts or discloses any information that serves as the basis for those claims.

§ 13.3.5 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests. CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

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§ 13.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 13.4.3. The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

.5 damage to the Owner or a Separate Contractor (including, but not limited to, liquidated damages);

~~**§ 13.4.5 The Architect may not withhold a Certificate for Payment in whole or in part, and the Owner shall not withhold payments to the Contractor, pertaining to one Contract to offset amounts in dispute under a separate Contract.**~~
~~**§ 13.4.6 When either party6**~~ When the Contractor disputes the Architect's decision regarding a Certificate for Payment under Section 13.4.3, in whole or in part, ~~that party may~~the Contractor must submit a Claim in accordance with Article 19, or else it waives any claim or argument related to this issue.

§ 13.5.4 ~~Provided the Owner has fulfilled its payment obligations under the Contract Documents, the~~The Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

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§ 13.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. ~~Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents~~Retainage withheld under the Agreement is not payable to the Contractor until final completion and acceptance of the entire Project by Owner.

§ 13.7.2 ~~Final payment shall not become due until the Contractor has delivered~~As a condition precedent to the Owner's issuance of final payment and payment of any remaining retained percentage, Contractor must deliver to the Owner a complete release of all liens arising out of the Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 13.7.3 The making of final payment shall not constitute a waiver of claims by the Owner~~ except those arising from~~

~~.1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;~~
~~.2 failure of the Work to comply with the requirements of the Contract Documents;~~
~~.3 terms of special warranties required by the Contract Documents; or~~
~~.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment~~

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§ 14.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately~~ and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.~~

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~~§ 14.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 14.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~

~~§ 14.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.~~ IF CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS THE OWNER, ITS CONSULTANTS, TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE, AS PROVIDED FOR IN SUBPARAGRAPH 7.15.

ARTICLE 15 ~~INSURANCE AND BONDS~~CHANGES IN THE WORK

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§ 15.1 ~~Contractor's Insurance~~

~~The Contractor shall purchase and maintain insurance coverage required in this Article 15 and as otherwise required for a specific project as set forth in a Work Order.~~

~~§ 15.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 15.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Master Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 16.4, unless a different duration is stated below:~~

~~§ 15.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ($) each occurrence, ($) general aggregate, and ($) aggregate for products-completed operations hazard, providing coverage for claims including~~

- ~~.1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;~~
- ~~.2 personal and advertising injury;~~
- ~~.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;~~
- ~~.4 bodily injury or property damage arising out of completed operations; and~~
- ~~.5 the Contractor's indemnity obligations under Section 7.15.~~

~~§ 15.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than ($) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.~~

~~§ 15.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 15.1.2 and 15.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

~~§ 15.1.5 Workers' Compensation at statutory limits.~~

~~§ 15.1.6 Employers' Liability with policy limits not less than ($) each accident, ($) each employee, and ($) policy limit.~~

~~§ 15.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, as set forth in the Work Order.~~

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~~**§ 15.1.8** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, as set forth in the Work Order.~~

~~**§ 15.1.9** Coverage under Sections 15.1.7 and 15.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined limits as set forth in the Work Order.~~

~~**§ 15.1.10** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 15.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 15.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.~~

~~**§ 15.1.11** The Contractor shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Contractor.~~

~~**§ 15.1.12** To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 15.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.~~

~~**§ 15.1.13** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 15.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~

~~**§ 15.1.14 Other Insurance Provided by the Contractor**~~

~~*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*~~

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~~**§ 15.2 Owner's Insurance**~~

~~**§ 15.2.1 Owner's Liability Insurance**~~

~~The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.~~

~~**§ 15.2.2 Property Insurance**~~

~~**§ 15.2.2.1** For each Work Order, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 15.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Master Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.~~

~~**§ 15.2.2.2** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 15.2.2.1 or, if necessary, replace the insurance policy required under Section 15.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 16.4.~~

~~**§ 15.2.2.3** If the insurance required by this Section 15.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.~~

~~**§ 15.2.2.4** For each Work Order, if the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 16.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.~~

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~~§ 15.2.2.5 Prior to commencement of the Work in each Work Order, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 15.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 15.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.~~

~~§ 15.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 15.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work on the Project(s) to which the lapsed insurance applies until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance~~By appropriate Modification, changes in the Work may be accomplished after execution of a Work Order. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive. The parties stipulate that (1) the term "change order" as used in Texas Local Gov't Code § 271.153(2) exclusively means a fully executed Change Order as defined herein, and (2) the phrase "additional work the contractor is directed to perform by a local governmental entity in connection with the contract" exclusively refers to additional work that is the subject of a Construction Change Directive as defined herein.

§ 15.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

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~~**§ 15.2.2.7 Waiver of Subrogation**~~

~~**§ 15.2.2.7.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Master Agreement or other property insurance applicable to the Project where the loss occurred, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 15.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.~~

~~**§ 15.2.2.7.2** If during a Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the~~

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~~Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 15.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

~~**§ 15.2.2.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~

~~**§ 15.2.3 Other Insurance Provided by the Owner**~~

~~*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*~~

~~**§ 15.3 Performance Bond and Payment Bond**~~

~~The Contractor's performance bond and payment bond obligations shall be as required in the Work Order.~~

~~**§ 15.3.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.~~

~~**§ 15.3.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished~~**3** The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

§ 16.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense~~, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work~~.

§ 16.2 In addition to the Contractor's obligations under Section 7.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 13.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. ~~The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~

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§ 17.2 Governing Law and Venue

The Work Order shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 19.6~~Exclusive venue for any action arising out of this Agreement or any Contract is in the county where Owner's central administrative offices are located.

If the Architect fails to certify payment as provided in Section 13.4.1 for a period of ~~30~~45 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 3.1.5 for a period of ~~30~~45 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work ~~executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages~~properly executed.

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders

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of a public authority; ~~or~~

.5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;

.6 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or

.7 fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents.

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§ 18.1.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner ~~and not expressly waived~~, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

The Owner may, at any time, terminate a Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work ~~executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:~~properly executed.

~~*(Insert the amount of, or method for determining, the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)*~~

§ 19.1 ~~Claims, disputes, and other matters in question arising out of or relating to a Contract executed pursuant to this Master Agreement, including those alleging an error or omission by the Architect but excluding those arising under Section 14.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 19.11 and Sections 13.7.3 and 13.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution~~Any demand or assertion by the Contractor seeking, as a matter of right, payment of money, interpretation of any contractual responsibility, a change in the Contract Time, or other relief with respect to the terms of the Contract, is subject to the Claims process outlined in this Article 19. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the Contractor. This Agreement does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents, to withhold or seek any amount from the Contractor, or for any other reason. Contractor's failure to file a timely and proper Claim as described in this Article 19 constitutes a waiver of Contractor's right to make any claim or argument regarding that subject matter and a failure to follow contractual adjudication procedures necessary to maintain its right to seek any judicial relief against Owner. The requirements of this section 19.1 (and all of its subparts) shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.

§ 19.2.1 Claims ~~by either the Owner or Contractor,~~ where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 16.2, shall be initiated by notice to the Architect and Owner within ~~21~~90 days after occurrence of the event giving rise to such Claim or within ~~21~~90 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 19.2.23 All Claims by ~~either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 16.2, shall be initiated by notice to the other party.~~

~~**§ 19.3 Time Limits on Claims**~~

~~The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Master~~

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~~Agreement, whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 19.3.~~

~~§ 19.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines~~Contractor must be initiated by written notice titled "Notice of Claim" ("Notice") and sent to the Architect and Owner's designated representative. The Notice shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent that the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice, then the Notice shall be amended at the earliest date that is reasonably possible. It is imperative that Owner receive timely specific Notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly. Any claim or portion of a claim by Contractor that has not been made the specific subject of a Notice within ninety (90) days after the occurrence of the event giving rise to such claim or within ninety (90) days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier, is waived. Pursuant to Texas Civil Practices and Remedies Code Section 16.071, Contractor agrees that this is a reasonable notice requirement.

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§ 19.52.4 ~~The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Master Agreement. A request for mediation shall be made in writing, delivered to the other party to this Master Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings~~Architect will serve as the Initial Decision Maker for all Claims. If there is no Architect, then the Owner shall be the Initial Decision Maker. The Initial Decision Maker will review Claims and within 30 days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the Contractor or a response with supporting data from the Owner, (2) reject the Claim in whole or in part, (3) approve the Claim, or (4) suggest a compromise. The Initial Decision Maker shall reject all Claims that are not timely filed or that fail to meet any requirements of this Agreement. In addition to other requirements under this Agreement, full compliance and exhaustion of the Claims process is a condition precedent to either (1) any demand for mediation by Contractor, or (2) any lawsuit by Contractor.

§ 19.3 Contractual Adjudication Procedure for all Claims and Disputes

.1 The requirements of this section 19.3 shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.

~~**§ 19.6** If the parties have selected arbitration as the method for binding dispute resolution in this Master Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Master Agreement. Demand for arbitration shall be made in writing, delivered to the other party to this Master Agreement, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 19.7** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Master Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~**§ 19.8** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.~~

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~~§ 19.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Master Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~2 Pre-Litigation Grievance and Mediation. Any claim, dispute or other matter in question that Contractor has against Owner shall be subject to full exhaustion of the grievance procedure found in Owner's GF (LOCAL) policy and non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by Contractor. In the case of any such claim, dispute, or other matter, by the Contractor against the Owner, including, but not limited to, any claim that the Owner has breached a contract, the Contractor may not file a lawsuit or demand mediation until the complaint procedure found in Owner's GF (LOCAL) policy has been fully exhausted regarding the contested matter. A copy of this policy is attached hereto and incorporated herein as Exhibit C. The Contractor's failure to timely file a grievance under policy GF (LOCAL), meet any requirement of this Article 19, or otherwise fully exhaust policy GF (LOCAL) in accordance with the policy's requirements is a failure to adhere to contractual adjudication procedures, a failure to exhaust remedies, a failure to fulfill conditions precedent, constitutes waiver, and is a bar to suit against the Owner.

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a. The timelines under Policy GF (LOCAL) are amended for purposes of this Agreement as follows: Contractor's complaint must be reduced to writing and filed within ninety (90) calendar days of the date the Contractor first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint. If the Contractor fails to meet this timeline, the Contractor will have failed to exhaust this remedy, will have failed to adhere to this contractual adjudication procedure, will have failed to fulfill conditions precedent to suit, will have waived the complaint, and will be barred from suing the Owner.

b. Contractor agrees that, in order to fully exhaust its remedies under policy GF (LOCAL) and otherwise comply with this section 19.3, Contractor must identify and articulate in writing the specific factual and legal basis for its claims. Any basis that is not identified and articulated by the Contractor as part of its complaint under GF (LOCAL) is waived by the Contractor and may not be asserted in any subsequent proceeding against the Owner.

c. The following are each an independent condition precedent to the institution of civil proceedings by the Contractor against the Owner concerning the contested matter: 1) full exhaustion of claims through Owner's GF (LOCAL) policy as described herein, 2) full exhaustion of the Claims process referenced in this Agreement, 3) a written demand by the Contractor for mediation, and 4) good faith and full participation in the mediation process.

d. Following the full exhaustion of claims through Owner's GF (LOCAL) procedure, and upon receipt by Owner of Contractor's written demand for mediation, Owner may, at its option, either proceed with non-binding mediation of the dispute, or provide written notice to Contractor of Owner's decision to waive its right to compel such mediation. Owner's voluntary participation in any mediation or any other settlement discussions shall not be construed as a waiver of any failure by Contractor to exhaust remedies, follow contractual adjudication procedures, or otherwise comply with the Contract Documents. If the parties participate in mediation, the parties shall share the mediator's fee and any filing fees equally.

The Contractor ~~and Owner waive claims~~waives Claims against ~~each other~~the Owner for consequential damages arising out of or relating to ~~any Contracts formed pursuant to this Master Agreement. This mutual waiver includes~~this Agreement and each Contract. This waiver includes, but is not limited to, damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, delays, and for loss of profit. Contractor also waives all claims for increased cost to perform the work as a direct result of Owner-caused delays or acceleration.

~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~

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~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 18. Nothing contained in this Section 19.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents~~

This waiver is applicable, without limitation, to all such damages due to Owner's termination in accordance with this Agreement. Nothing contained in this section 19.11 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

ARTICLE 20 MISCELLANEOUS

§ 20.1 Contractor agrees to waive any claim it has or may have against the Owner, the Architect, and their respective employees and officers, arising out of or in connection with the administration, evaluation, or recommendation of any bid; waiver of any requirements under the Bid Documents; or the Contract Documents; acceptance or rejection of any bids; and award of the Contract.

§ 20.2 The Contractor shall not execute a contract with any Subcontractor that contains an agreement or provision to arbitrate claims. In the event that a Subcontractor seeks to arbitrate a claim arising out of or relating to the Contract Document or this Project, Contractor shall not seek to join in such or any other arbitration proceeding relating to this Project.

§ 20.3 Any right to recovery of attorney's fees available under Texas Local Government Code Chapter 271 is hereby waived.

§ 20.4 This Section 20.4 only applies if Contractor has more than 10 full time employees and the contract is valued at $100,000 or more. By executing this agreement, Contractor verifies the following:

.1 As required by Texas Government Code § 2271.002, Contractor verifies that it does not boycott Israel and will not boycott Israel during the term of this contract.

.2 As required by Texas Government Code § 2274.002, Contractor verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

.3 As required by Texas Government Code § 2276.002, Contractor verifies that it does not boycott energy companies and will not boycott energy companies during the term of this contract.

§ 20.5 Contractor agrees to exhaust its administrative remedies under District Policy before seeking judicial relief of any type in connection with any matter related to any dispute under this Agreement.

§ 20.6 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.

§ 20.7 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by Contractor of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by Owner of any of the covenants, conditions or agreements hereof to be performed by Contractor shall be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 20.8 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities

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from suit and liability as provided by the constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein, and as specifically authorized by law.

§ 20.9 Contracting Information

§ 20.9.1 This section 20.9 applies only if, per Texas Government Code §552.371(a), (1) the Agreement has a stated expenditure of at least $1 million in public funds for the purchase of goods or services by the governmental body; or (2) the Agreement results in the expenditure of at least $1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner.

§ 20.9.2 Pursuant to Texas Government Code §552.372, the Contractor must:

(1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract;

(2) promptly provide to the Owner any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and

(3) on completion of the contract, either:

(a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or

(b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

§ 20.9.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

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§ 20.9.4 For purposes of this section 20.9, "contracting information" is defined by Texas Government Code §552.003(1-a) and means the following information maintained by a governmental body or sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor:

(A) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body;

(B) solicitation or bid documents relating to a contract with a governmental body;

(C) communications sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor during the solicitation, evaluation, or negotiation of a contract;

(D) documents, including bid tabulations, showing the criteria by which a governmental body evaluates each vendor, contractor, potential vendor, or potential contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and

(E) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

.1 This AIA Document A121™–2018, Standard Form Master Agreement Between Owner and Contractor~~;~~

~~.2 Exhibit A, Determination of the Cost of the Work, if applicable.~~

~~.3 AIA Document E202™–2022, BIM Exhibit for Sharing Models with Project Participants, Where Model~~

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~~Versions May Not be Enumerated as a Contract Document, if completed, or the following:~~
, as modified;

Variable Information

PAGE 1

AGREEMENT made as of the day of in the year

Fort Stockton Independent School District

101 W. Division

Fort Stockton, Texas 79735

NOT FOR EXECUTION – FOR PROCUREMENT PURPOSES ONLY

PAGE 3

Owner's Board of Trustees, acting as a body corporate.

PAGE 4

~~%~~ Five Percent (5%) or as otherwise required by law.

PAGE 5

[X] Litigation in a court of competent jurisdiction

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Exhibit A – Determination of the Cost of the Work, if applicable

Exhibit B – Pricing Information

Exhibit C – Owner's GF(LOCAL) Policy

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Certification of Document's Authenticity

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I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:15:31 CDT on 06/30/2026 under Order No. 20250112817 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A121™ - 2018, Standard Form of Master Agreement Between Owner and Contractor where Work is provided under multiple Work Orders, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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AIA® Document A121™ – 2018 Exhibit A

Determination of the Cost of the Work

THE OWNER:
(Name, legal status, address, and other information)

Fort Stockton Independent School District
101 W. Division
Fort Stockton, Texas 79735

THE CONTRACTOR:
(Name, legal status, address, and other information)

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ADDITIONS AND DELETIONS:
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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

ARTICLE A.1 COSTS TO BE REIMBURSED

§ A.1.1 Cost of the Work

§ A.1.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article A.1.

§ A.1.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost. If Contractor fails to do so, it waives any right to reimbursement of such costs. Any costs subject to the Owner's prior approval and not already set forth in this Article A.1 shall be identified in the Work Order to which those costs relate.

§ A.1.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior written approval of the Owner.

§ A.1.1.4 The Cost of the Work shall not include costs incurred because of the negligence, breach of contract, or other misconduct of the Contractor or of any subcontractor. All cost items qualifying for reimbursement under this Article A.1 as included in the Cost of the Work shall be included in the Guaranteed Maximum Price (if applicable).

§ A.1.2 Labor Costs

§ A.1.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops.

§ A.1.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior written approval.

§ A.1.2.2.1 Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, the type of activity, and, if applicable, any agreed percentage of time to be devoted to the Work.)

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§ A.1.3 Subcontract Costs
Payments made by the Contractor to Subcontractors in accordance with the requirements of their subcontracts and this Agreement.

§ A.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction
§ A.1.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.1.4.2 Costs of materials described in the preceding Section A.1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
§ A.1.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ A.1.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section A.1.8.1, shall be subject to the Owner's prior written approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ A.1.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.1.6 Miscellaneous Costs
§ A.1.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to the Contract.

§ A.1.6.3 Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Contractor is required by the Contract Documents to pay.

§ A.1.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work.

§ A.1.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.

§ A.1.6.7 Reasonable costs of document reproductions and delivery charges.

§ A.1.8 Related Party Transactions
§ A.1.8.1 For purposes of this Section A.1.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate or other entity having common ownership of, or sharing common management with the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds any equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person who has the right to control the business or affairs of the Contractor.

§ A.1.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article A.4. If the Owner fails to authorize the transaction in

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writing, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article A.4.

ARTICLE A.2 COSTS NOT TO BE REIMBURSED

§ A.2.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article A.1;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Article A.1;
- .8 Where a Guaranteed Maximum Price is part of this Agreement, costs that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs incurred because of the negligence, breach of contract, or other misconduct of the Contractor or any Subcontractor;
- .10 Delay damages or claims, including but not limited to acceleration costs; and
- .11 Storage costs, unless with prior written approval of the Owner.

ARTICLE A.3 DISCOUNTS, REBATES AND REFUNDS

§ A.3.1 Cash discounts, trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ A.3.2 Amounts that accrue to the Owner in accordance with Section A.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE A.4 SUBCONTRACTS AND OTHER AGREEMENTS

§ A.4.1 Those portions of the Work that the Contractor does not perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers and, in consultation with the Architect, object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ A.4.2 When the Contractor has provided a Guaranteed Maximum Price, and a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, and (4) offers the best value to the Owner, then the Contractor may request that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.4.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Master Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost-plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article A.5.

§ A.4.4 The Contractor shall include the following specific notices in the information to proposers, along with any other notices required by law:

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.1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate; and

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

ARTICLE A.5 ACCOUNTING RECORDS

§ A.5.1 The Contractor shall keep full and detailed records and accounts related to the Project and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda and other data relating to the Contract. The Contractor shall preserve these records, for a period of twelve (12) years after final payment, or for such longer period as may be required by law. All records shall be maintained in accordance with generally accepted accounting principles and procedures, consistently applied. Subcontractors retained by the Contractor on a cost-plus basis shall have the same obligations to retain records and cooperate with audits as are required of the Contractor under this Article A.5.

§ A.5.2 When the Contractor believes that all the Work required by a Work Order has been fully performed, the Contractor shall deliver to the Owner a final accounting of the Cost of the Work.

§ A.5.3 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 3.2.1 of the Master Agreement have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 13.4.3 of the Master Agreement. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ A.5.4 If the Owner's auditors' report concludes that the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the dispute without a further decision of the Architect. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. If the Contractor fails to request mediation within this 30-day period, the substantiated amount reported by the Owner's auditors shall become binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount, if any, determined by the Owner's auditors to be due the Contractor.

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Additions and Deletions Report for
AIA® Document A121™ – 2018 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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Changes to original AIA text

PAGE 1

§ A.1.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost. If Contractor fails to do so, it waives any right to reimbursement of such costs. Any costs subject to the Owner's prior approval and not already set forth in this Article A.~~2~~1 shall be identified in the Work Order to which those costs relate.

§ A.1.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior written approval of the Owner.

§ A.1.1.4 The Cost of the Work shall not include costs incurred because of the negligence, breach of contract, or other misconduct of the Contractor or of any subcontractor. All cost items qualifying for reimbursement under this Article A.1 as included in the Cost of the Work shall be included in the Guaranteed Maximum Price (if applicable).

§ A.1.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops.

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§ A.1.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior written approval.

~~**§ A.1.2.3** Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

~~**§ A.1.2.4** Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.1.2.~~

~~**§ A.1.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.~~

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§ A.1.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section A.1.8.1, shall be subject to the Owner's prior written approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

~~§ A.1.5.4 Costs of the Contractor's site office, including general office equipment and supplies.~~
~~§ A.1.6.1.1 Costs of self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~
~~§ A.1.6.1.2 Costs of insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.~~
~~§ A.1.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.~~

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§ A.1.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work ~~for which reimbursement is excluded by Article 17 of the Master Agreement or by other provisions of the Contract Documents, and which do not fall within the scope of Section A.1.7.3~~.

~~§ A.1.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor has reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Section 9.14 of this Agreement. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price.~~
~~§ A.1.6.6 Costs for communications services, electronic equipment, and software directly related to the Work and located at the site, with the Owner's prior approval.~~
~~§ A.1.6.7 Costs of document reproductions and delivery charges.~~
~~§ A.1.6.8 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~
~~§ A.1.6.9 Legal, mediation, and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Master Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~
~~§ A.1.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval.~~
~~§ A.1.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~
~~§ A.1.7 Other Costs and Emergencies~~
~~§ A.1.7.1 Other costs incurred in the performance of the Work with the Owner's prior approval.~~
~~§ A.1.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.~~
~~§ A.1.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.~~
7 Reasonable costs of document reproductions and delivery charges.

§ A.1.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article A.4. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a

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related party according to the terms of Article A.4.

.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office~~, except as specifically provided in Section A1.2.2~~;

.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor~~, unless the Owner has provided written approval before such costs are incurred~~;

.6 ~~Except as provided in Section A.1.7.3 of this Master Agreement, costs~~Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

.7 Any cost not specifically and expressly described in Article A.1; ~~and~~

.8 Where a Guaranteed Maximum Price is part of this Agreement, costs~~, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded~~ that would cause the Guaranteed Maximum Price to be exceeded;

.9 Costs incurred because of the negligence, breach of contract, or other misconduct of the Contractor or any Subcontractor;

.10 Delay damages or claims, including but not limited to acceleration costs; and

.11 Storage costs, unless with prior written approval of the Owner.

§ A.3.1 Cash discounts ~~obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade~~, trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ A.4.1 Those portions of the Work that the Contractor does not ~~customarily~~ perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers and, in consultation with the Architect, object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ A.4.2 When the Contractor has provided a Guaranteed Maximum Price, and a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; ~~and~~ (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, and (4) offers the best value to the Owner, then the Contractor may ~~require~~request that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.4.4 The Contractor shall include the following specific notices in the information to proposers, along with any other

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notices required by law:

.1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

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.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate; and

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

§ A.5.1 The Contractor shall keep full and detailed records and accounts related to the ~~cost of the Work~~Project and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall~~, during regular business hours and upon reasonable notice,~~ be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda and other data relating to the Contract. The Contractor shall preserve these records, for a period of ~~three~~twelve (12) years after final payment, or for such longer period as may be required by law. All records shall be maintained in accordance with generally accepted accounting principles and procedures, consistently applied. Subcontractors retained by the Contractor on a cost-plus basis shall have the same obligations to retain records and cooperate with audits as are required of the Contractor under this Article A.5.

~~**§ A.5.5** If, subsequent to final payment and at the Owner's request, the Contractor incurs costs in connection with the correction of defective or non-conforming work as described in Article A.1, Costs to be Reimbursed, and not excluded by Article A.2, Costs Not to be Reimbursed, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.~~

Variable Information

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Fort Stockton Independent School District

101 W. Division

Fort Stockton, Texas 79735

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Certification of Document's Authenticity

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I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 18:40:42 CDT on 07/31/2026 under Order No. 20250112817 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A121™ - 2018 Exhibit A, Determination of the Cost of the Work, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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Complaints

In this policy, the terms "complaint" and "grievance" shall have the same meaning.

Other Complaint Processes

Complaints by members of the public shall be filed in accordance with this policy, except as required by the policies listed below. Some of these policies require appeals to be submitted in accordance with GF after the relevant complaint process:

1. Complaints concerning instructional resources shall be submitted in accordance with the EF series.
2. Complaints concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with the CKE series.

Complaints regarding refusal of entry to or ejection from District property based on Education Code 37.105 shall be filed in accordance with this policy. However, the timelines shall be adjusted as necessary to permit the complainant to address the Board in person within 90 calendar days of filing the initial complaint, unless the complaint is resolved before the Board considers it. [See GKA(LEGAL)]

Informal Process

The Board encourages the public to discuss concerns with an appropriate administrator who has the authority to address the concerns. Concerns should be expressed as soon as possible to allow early resolution at the lowest possible administrative level.

Informal resolution shall be encouraged but shall not extend any deadlines in this policy, except by mutual written consent.

Filing Deadlines

If a member of the public has engaged in the informal process in an attempt to resolve the complaint with the District and has not reached a resolution during the process, the individual must file a complaint within 15 business days of the date the individual first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance.

Deadline Extensions

All deadlines shall be strictly followed unless otherwise required by law or modified by mutual written consent.

Formal Process

An individual may initiate the formal process described below by timely filing a written complaint form.

The process described in this policy shall not be construed to create new or additional rights beyond those granted by law or Board policy, nor to require a full evidentiary hearing or "mini-trial" at any level.

The complaint form shall be filed with the lowest level administrator who has the authority to remedy the alleged problem. In most circumstances, the individual shall file a Level One complaint with the

campus principal for any complaint on a matter related to a campus. For a complaint that arises on a matter that is unrelated to a campus, the complaint shall be filed with the appropriate District-level administrator.

If the subject matter of the complaint requires a Board decision, is a complaint about a Board member, or is a complaint about the Superintendent, the complaint shall be initiated at the Board level. A preliminary hearing to develop a record or recommendation for the Board may be conducted by an appropriate administrator.

A Board member shall be permitted to file a complaint under this policy, but, if the complaint is considered by the Board or Board committee, the Board member shall be prohibited from voting on the Board's or Board committee's decision.

If the complaint is not filed with the appropriate administrator, the receiving administrator must note the date and time the complaint form was received and immediately forward the complaint form to the appropriate administrator.

Option to Continue Informal Process

Even after initiating the formal complaint process, the complainant is encouraged to seek informal resolution of their concerns. A complainant whose concerns are resolved may withdraw a formal complaint at any time.

Notice of Complaint

A District employee against whom a complaint has been filed shall be provided notice of the complaint in accordance with administrative regulations. The employee shall have sufficient opportunity to submit a written response to the complaint that shall be included in the record of the complaint.

Freedom from Retaliation

Neither the Board nor any District employee shall unlawfully retaliate against any individual for bringing a concern or complaint.

General Provisions

Filing

Complaint forms and appeal notices may be filed by hand-delivery, by electronic communication, or by U.S. Mail. Hand-delivered filings shall be timely filed if received by the appropriate administrator or designee by the close of business on the deadline. Filings submitted by electronic communication shall be timely filed if they are received by the close of business on the deadline, as indicated by the date/time shown on the electronic communication. Mail filings shall be timely filed if they are postmarked by U.S. Mail on or before the deadline and received by the appropriate administrator or designated representative no more than three business days after the deadline.

Scheduling Hearings

The District shall make reasonable attempts to schedule hearings at a mutually agreeable time. If the complainant fails to appear at a

scheduled hearing, the District may hold the hearing and issue a decision in the complainant's absence.

Decision

A "decision" shall mean a written communication to the complainant from the appropriate administrator that provides an explanation of the basis of the decision, an indication of each document that supports the decision, and any relief or redress to be provided. A decision shall be issued on the merits of the concern raised in the complaint notwithstanding any procedural errors or the type of relief or redress requested.

The decision shall also include information regarding the filing of an appeal in accordance with this policy. After a hearing at Level Three, the decision shall include information on submitting an appeal to the commissioner.

A decision may be hand-delivered, sent by electronic communication to the complainant's email address of record, or sent by U.S. Mail to the complainant's mailing address of record. Mailed decisions shall be timely if they are postmarked by U.S. Mail on or before the deadline.

Representative

"Representative" shall mean any person who or organization that is designated by a complainant to represent the complainant in the complaint process.

The complainant may designate a representative through written notice to the District at any level of this process. The representative may participate in person or by telephone conference call. If the complainant designates a representative with fewer than three business days' notice to the District before a scheduled hearing, the District may reschedule the hearing to a later date, if desired, in order to include the District's counsel. The District may be represented by counsel at any level of the process.

Consolidating Complaints

To promote efficiency in addressing complaints, the appropriate administrator shall determine if separate or serial complaints arising from an event or series of related events shall be consolidated.

Costs Incurred

Each party shall pay its own costs incurred in the course of the complaint.

Complaint and Appeal Forms

Complaints and appeals under this policy shall be submitted on a form provided by the District.

Copies of any documents that support the complaint should be included with the complaint form. If the complainant does not have copies of these documents, copies may be presented at the Level One hearing. After the Level One hearing, the complainant may supplement the record with additional documents or include additional claims.

Record	A record of each complaint hearing shall be created and retained in accordance with this policy. The record shall include documents submitted by the complainant, documents determined relevant by District personnel, and the decision.
Remand	A complaint or appeal form that is incomplete in any material aspect shall be refiled, if at Level One, and remanded at all other levels in order to develop an adequate record of the complaint. If an adequate record has not been developed, the appropriate administrator may remand the complaint to a lower level. The Board or Board committee may remand a complaint to a lower level if at the Board level of review an adequate record has not been developed.
Assignment of Hearing Officer	When a District employee is the subject of a complaint, the hearing shall be conducted by an administrator who is in a supervisory or higher organizational role. The District employee who is the subject of the complaint shall recuse themselves from reviewing the complaint at any level in the process.
Investigation	The District may conduct an investigation at any level in the complaint process. If the District and the complainant mutually agree, all deadlines shall be suspended during an investigation.
Complaint Levels Level One	At Level One, the appropriate hearing officer shall hold a hearing with the complainant within 10 calendar days after receipt of the written complaint. The hearing officer may set reasonable time limits for the hearing. The hearing officer shall provide the complainant a decision within 20 calendar days following the hearing. In reaching a decision, the hearing officer may consider information provided with the complaint form and any other relevant documents or information the hearing officer believes will help resolve the complaint.
Level Two	If the complainant did not receive the relief requested at Level One or if the time for a decision has expired, the complainant may request a hearing at Level Two to appeal the Level One decision. The appeal notice must be filed in writing, on a form provided by the District, within 20 calendar days of the date of the Level One decision or, if no decision has been communicated to the complainant, within 20 calendar days of the Level One decision deadline. After receiving notice of the appeal, the Level One hearing officer shall prepare and forward a record of the Level One complaint to the Level Two hearing officer and provide a copy of the Level One record to the complainant.

The Level One record shall include:

1. The original complaint form and any attachments.
2. Any other documents submitted by the complainant at Level One.
3. If the complaint is against a District employee, the written response of the District employee, if any.
4. The decision issued at Level One and any attachments.
5. All other documents relied upon by the Level One hearing officer in reaching the Level One decision.

The hearing officer shall hold a hearing within 10 calendar days after the appeal notice is filed. The hearing officer may set reasonable time limits for the hearing.

The hearing officer shall provide the complainant a decision within 20 calendar days following the hearing. In reaching a decision, the hearing officer may consider the Level One record, any additional information provided prior to the Level Two hearing, and any other relevant documents or information the hearing officer believes will help resolve the complaint.

Recordings of the Level One and Level Two hearings, if any, shall be maintained with the Level One and Level Two records.

Level Three

If the complainant did not receive the relief requested at Level Two or if the time for a decision has expired, he or she may appeal the decision to the Board.

The appeal notice must be filed in writing, on a form provided by the District, within 20 calendar days of the date of the Level Two decision or, if no decision has been communicated to the complainant, within 20 calendar days of the Level Two decision deadline.

Unless the Board delegates a committee in accordance with law, the Board shall hear the appeal of the Level Two decision.

After receiving notice of the appeal, the Board or Board committee shall hold a meeting to discuss the complaint no later than 60 calendar days after the date on which the Level Two decision was made.

The Superintendent shall inform the complainant whether the Board or a Board committee will hear the appeal and of the date, time, and place of the meeting at which the complaint will be on the agenda for presentation to the Board or Board committee.

At least five business days before the Board or Board committee meeting, the Superintendent shall provide the complainant a description of any information the Board intends to rely on that is not contained in the record created at the previous hearing levels, including any preliminary hearing.

The Superintendent shall provide the Board the record of the Level Two appeal. The complainant may request a copy of the Level Two record.

The Level Two record shall include:

1. The Level One record.
2. The notice of appeal from Level One to Level Two.
3. Any other documents submitted by the complainant at Level Two.
4. The decision issued at Level Two and any attachments.
5. All other documents relied upon by the administration in reaching the Level Two decision.

The complainant may request that the complaint be heard in open or closed meeting. The District shall honor that request unless the Texas Open Meetings Act or other applicable law requires otherwise. [See BE]

At the meeting, the presiding officer may set reasonable time limits and guidelines for the presentation, including an opportunity for the complainant and administration to each make a presentation and provide rebuttal and an opportunity for questioning by Board members.

In addition to any other record of the meeting required by law, the Board or Board committee shall prepare a separate record of the Level Three presentation. The Level Three presentation, including the presentation by the complainant or the complainant's representative, any presentation from the administration, and questions from Board members with responses, shall be recorded by audio recording, video/audio recording, or court reporter.

The Board or Board committee shall then consider the complaint. It shall make a decision no later than 30 calendar days after the date of the Board or Board committee meeting at which the complaint was presented. The complainant shall be provided a decision in accordance with this policy and state law.

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AIA® Document A221™ – 2018

Work Order *for use with Master Agreement Between Owner and Contractor*

WORK ORDER number made as of the day of in the year
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

Fort Stockton Independent School District
101 W. Division
Fort Stockton, Texas 79735

and the Contractor:
(Name, legal status, address, and other information)

for the following **PROJECT**:
(Name, location, and detailed description)

NOT FOR EXECUTION – FOR PROCUREMENT ONLY

The Architect for the Project:
(Name, legal status, address, and other information)

THE CONTRACT
This Work Order, together with the Contract Documents enumerated herein, including the Master Agreement between Owner and Contractor dated the day of in the year
(In words, indicate day, month, and year.)

form the Contract.

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document provides the Contractor's scope of Work, and related information, and is intended to be used with AIA Document A121™– 2018, Standard Form of Master Agreement Between Owner and Contractor where Work is provided under multiple Work Orders.

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TABLE OF ARTICLES

1 THE WORK OF THIS WORK ORDER

2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3 CONTRACT SUM

4 PAYMENTS

5 INSURANCE AND BONDS

6 PARTY REPRESENTATIVES

7 ENUMERATION OF CONTRACT DOCUMENTS

ARTICLE 1 THE WORK OF THIS WORK ORDER

The Contractor shall execute the Work described in the Contract Documents enumerated in Article 7 of this Work Order, and any modifications issued after execution of this Work Order, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

[ ] The date of this Work Order.

[ ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Work Order.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check the appropriate box and complete the necessary information.)

[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[ ] By the following date:

§ 2.3.2 The Contractor shall achieve Final Completion of the entire Work no later than thirty (30) days from the date Substantial Completion is achieved.

§ 2.3.3 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

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§ 2.3.4 If the Contractor fails to achieve Substantial Completion and/or Final Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.6.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

[ ] Stipulated Sum, in accordance with Section 3.2 below

[ ] Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

[ ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

[ ] Other, in accordance with Section 3.5 below

(Based on the selection above, complete Section 3.2, 3.3, 3.4 or 3.5 below.)

§ 3.2 Stipulated Sum

§ 3.2.1 The Stipulated Sum shall be ($), subject to additions and deductions as provided in the Contract Documents. The Stipulated Sum contains an Owner's Contingency in the amount of . This contingency is for the sole use of the Owner and is entirely within the Owner's discretion. This agreement does not allow the Contractor to force the Owner to make or approve any expenditure from the Owner's Contingency. If the Owner's Contingency is not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the Owner in calculating final payment.

§ 3.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Work Order, attach a schedule of such other alternates showing the change in the Stipulated Sum for each and the deadline by which the alternate must be accepted.)

§ 3.2.3 Unit prices, if any:
(Identify the item and state the unit price and any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit ($0.00)

§ 3.2.4 Allowances, if any, included in the Stipulated Sum:
(Identify each allowance.)

Item	Price

§ 3.3 Cost of the Work plus Contractor's Fee

§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.3.1.1 The following costs are subject to the Owner's prior approval:

§ 3.3.2 The Contractor's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the fee for changes in the Work.)

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§ 3.4 Cost of the Work plus Contractor's Fee with a Guaranteed Maximum Price

§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.4.1.1 The following costs are subject to the Owner's prior approval:

§ 3.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the fee for changes in the Work.)

§ 3.4.3 Guaranteed Maximum Price

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed ($), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.)

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Work Order, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 3.4.3.3 Unit Prices, if any:

(Identify the item and state the unit price and any applicable quantity limitations.)

Item	Units and Limitations	Price Per Unit ($0.00)

§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Item	Price

§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

§ 3.4.3.6 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

§ 3.5 Other

§ 3.5.1 The Contract Sum shall be determined in accordance with the following:

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(Insert a description of how the Contract Sum will be determined.)

§ 3.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

Pursuant to Section 3.3 of the applicable AIA A121 between Owner and Contractor, in the event the Contractor fails to achieve Substantial Completion of the Work by the date indicated in Section 2.3 of this Work Order, and extended by approved Change Order, the Owner shall be entitled to liquidated damages in the amount of $1,000 per day until the Work is substantially completed. In the event the Contractor fails to achieve Final Completion of the Work by the date indicated in Section 2.3 of this Work Order, and extended by approved Change Order, the Owner shall be entitled to liquidated damages in the amount of $500 per day until the Work is finally completed.

ARTICLE 4 PAYMENTS

§ 4.1 Payments shall be in accordance with Article 3 of the Master Agreement, except as indicated below:
(Indicate all payment terms that differ from those set forth in the Master Agreement, such as period covered by each Application for Payment or date upon which each Application for Payment is due.)

§ 4.2 Retainage will be withheld in accordance with Article 3 of the Master Agreement, except as indicated below:
(Indicate all retainage terms that differ from those set forth in the Master Agreement, such as retainage amount, items not subject to retainage, terms for reduction, or limitation of retainage.)

ARTICLE 5 INSURANCE AND BONDS

§ 5.1 Insurance shall be in accordance with Article 11 of the Master Agreement, except as indicated below:
(Insert any insurance requirements that differ from those stated in the Master Agreement, such as coverage types, coverage limits, and durations for professional liability or other coverages.)

§ 5.2 In addition to insurance requirements in the Master Agreement, the Contractor shall carry the following types of insurance.
(List below any other insurance coverage to be provided by the Contractor, not otherwise set forth in the Master Agreement, and any applicable limits.)

Coverage	Limits

§ 5.6 The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum ($0.00)
Payment Bond	In the amount of the contract, if required by Tex. Gov't Code § 2253.021
Performance Bond	In the amount of the contract, if required by Tex. Gov't Code § 2253.021

Payment and Performance Bonds shall meet all legal requirements.

ARTICLE 6 PARTY REPRESENTATIVES

§ 6.2 The Contractor identifies the following representative in accordance with Section 1.5.1 of the Master Agreement:
(List name, address, and other information.)

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ARTICLE 7 ENUMERATION OF CONTRACT DOCUMENTS

§ 7.1 The Contract Documents are defined in Section 5.2 of the Master Agreement and, except for Modifications issued after execution of this Work Order, are enumerated in the sections below.

§ 7.1.1 This Work Order

§ 7.1.2 The Master Agreement

§ 7.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Work Order.)

§ 7.1.6 The Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are enumerated in this Article 5.

§ 7.1.7 Additional documents, if any, forming part of the Contract Documents:
(List here any additional documents that are intended to form part of the Contract Documents.)

Exhibit A-1 – Prevailing Wage Rate Schedule

This Work Order entered into as of the day and year first written above.

OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
(Printed name and title)	*(Printed name and title)*

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Additions and Deletions Report for
AIA® Document A221™ – 2018

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:17:22 CDT on 06/30/2026.

Changes to original AIA text

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PAGE 3

§ 2.3.2 The Contractor shall achieve Final Completion of the entire Work no later than thirty (30) days from the date Substantial Completion is achieved.

§ 2.3.3 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

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§ 2.3.~~3~~4 If the Contractor fails to achieve Substantial Completion and/or Final Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.6.

§ 3.2.1 The Stipulated Sum shall be ($), subject to additions and deductions as provided in the Contract Documents. The Stipulated Sum contains an Owner's Contingency in the amount of . This contingency is for the sole use of the Owner and is entirely within the Owner's discretion. This agreement does not allow the Contractor to force the Owner to make or approve any expenditure from the Owner's Contingency. If the Owner's Contingency is not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the Owner in calculating final payment.

§ 3.3.1 The Cost of the Work is as defined in ~~AIA Document A121™ – 2018~~ Exhibit A, Determination of the Cost of the Work.

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Pursuant to Section 3.3 of the applicable AIA A121 between Owner and Contractor, in the event the Contractor fails to achieve Substantial Completion of the Work by the date indicated in Section 2.3 of this Work Order, and extended by approved Change Order, the Owner shall be entitled to liquidated damages in the amount of $1,000 per day until the Work is substantially completed. In the event the Contractor fails to achieve Final Completion of the Work by the date indicated in Section 2.3 of this Work Order, and extended by approved Change Order, the Owner shall be entitled to liquidated damages in the amount of $500 per day until the Work is finally completed.

§ 5.1 Insurance shall be in accordance with Article ~~15~~11 of the Master Agreement, except as indicated below:

~~**§ 5.3** Pursuant to section 15.1.7 of the Master Agreement, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ($) per claim and ($) in the aggregate.~~
~~**§ 5.4** Pursuant to section 15.1.8 of the Master Agreement, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ($) per claim and ($) in the aggregate.~~

PAGE 7

~~**§ 5.5** Pursuant to section 15.1.9 of the Master Agreement, the Contractor shall procure a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($) per claim and ($) in the aggregate.~~

Payment and Performance Bonds shall ~~be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Work Order~~meet all legal requirements.

~~**§ 6.1** The Owner identifies the following representative in accordance with Section 1.4.1 of the Master Agreement:~~
~~*(List name, address, and other information.)*~~

~~**§ 7.1.3** The Supplementary and other Conditions of the Contract:~~
~~**§ 7.1.5** The Drawings:~~
~~*(Either list the Drawings here or refer to an exhibit attached to this Work Order.)*~~

Variable Information

PAGE 1

Fort Stockton Independent School District

101 W. Division

Fort Stockton, Texas 79735

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Type	Penal Sum ($0.00)
Payment Bond	In the amount of the contract, if required by Tex. Gov't Code § 2253.021
Performance Bond	In the amount of the contract, if required by Tex. Gov't Code § 2253.021

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Exhibit A-1 – Prevailing Wage Rate Schedule

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:17:22 CDT on 06/30/2026 under Order No. 20250112817 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A221™ - 2018, Work Order for use with Master Agreement Between Owner and Contractor, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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"General Decision Number: TX20260173 05/18/2026

State: Texas

Construction Types: Building

Counties: Texas Counties of
Pecos

Modification Number	Publication Date
0	01/02/2026
1	05/18/2026

ASBE0021-001 06/01/2025

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR	$ 33.23	7.52

BOIL0592-002 01/01/2025

	Rates	Fringes
BOILERMAKER	$ 33.17	24.92

IRON0263-019 06/01/2025

	Rates	Fringes
IRONWORKER: REINFORCING	$ 29.64	8.43

LABO0154-022 05/01/2024

	Rates	Fringes
LABORERS: MASON TENDER - CEMENT/CONCRETE	$ 25.27	9.57

PLUM0412-008 01/02/2024

	Rates	Fringes
PLUMBER	$ 40.74	15.35

SUTX2009-060 04/20/2009

	Rates	Fringes
TRUCK DRIVER	$ 11.24	0.35
TILE SETTER	$ 15.00	0.00
SHEET METAL WORKER, INCLUDES HVAC DUCT INSTALLATION	$ 18.00	0.00
ROOFER	$ 15.10	1.29
PLASTERER	$ 12.00	0.00
PAINTER: BRUSH, ROLLER AND SPRAY	$ 15.80	0.00
OPERATOR: LOADER (FRONT END)	$ 10.54	0.00
OPERATOR: FORKLIFT	$ 14.58	0.00
OPERATOR: CRANE	$ 21.33	0.00
OPERATOR: BULLDOZER	$ 12.80	0.43
OPERATOR: BACKHOE/EXCAVATOR/TRACKHOE	$ 13.75	0.00
LATHER	$ 12.00	0.00
LABORER: MORTAR MIXER	$ 9.50	0.00
LABORER: MASON TENDER - BRICK	$ 12.02	0.00

LABORER: LANDSCAPE & IRRIGATION	$ 8.50	0.22
LABORER: COMMON OR GENERAL	$ 8.72	0.00
ELECTRICIAN	$ 15.85	0.00
CEMENT MASON/CONCRETE FINISHER	$ 13.27	0.00
CARPENTER, INCLUDES DRYWALL HANGING (EXCLUDES ACOUSTICAL CEILING INSTALLATION)	$ 13.46	0.00
BRICKLAYER	$ 17.76	0.00
ACOUSTICAL CEILING MECHANIC	$ 14.50	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least $13.65 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract from May 11, 2026, through December 31, 2026. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than "SU", "UAVG", "SA", or "SC" denotes that a union rate was

prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ﷺ identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

ﷺ wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ﷺ identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which

the classifications and rates under the ◆SA◆ identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION

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